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~~1288~~

No.

3666

1289

United States
Circuit Court of Appeals
For the Ninth Circuit.

BIG SESPE OIL COMPANY, a corporation
Appellant,

vs.

WILLIAM H. COCHRAN, a citizen of the State of
New York, and

WILLIAM H. COCHRAN AS TRUSTEE FOR
PACIFIC CRUDE OIL COMPANY.

Appellees.

Transcript of Record.

Upon Appeal from the United States District Court for
the Southern District of California,
Southern Division.

FILED

APR 16 1921

F. D. MONCKTON,

CLERK.

No.

United States
Circuit Court of Appeals
For the Ninth Circuit.

BIG SESPE OIL COMPANY, a corporation
Appellant,

vs.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

For Appellant:

DUDLEY W. ROBINSON, Esq., 816 Stock Exchange Building, Los Angeles, California.

A. I. McCORMICK, Esq., 921 Van Nuys Building, Los Angeles, California.

For Appellees:

THEODORE MARTIN, Esq., 608 Security Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION.

WILLIAM H. COCHRAN, a citi-) IN EQUITY
zen of the State of New York,) NO. E-26.

COMPLAINANT,)
and)

WILLIAM H. COCHRAN AS)
TRUSTEE FOR PACIFIC)
CRUDE OIL COMPANY,)
Intervening Complainant,)

VERSUS,)

CITATION
ON APPEAL.

BIG SESPE OIL COMPANY, a)
corporation formed, organized and)
existing under and by virtue of the)
laws of the State of California, and)
a citizen and resident of the said)
State; and)

E. G. McMARTIN, Sheriff of the)
County of Ventura, State of Cali-)
fornia, and also a citizen and resi-)
dent of the said State of California,)

DEFENDANTS.)

THE PRESIDENT OF THE UNITED STATES,
TO WILLIAM H. COCHRAN INDIVIDUALLY
AND WILLIAM H. COCHRAN AS TRUSTEE
FOR PACIFIC CRUDE OIL COMPANY, APPEL-
LEES, AND THEODORE MARTIN AND WIL-
LIAM H. COCHRAN, ATTORNEYS AND SO-
LICITORS FOR SAID APPELLEES, GREETING:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Appeals

for the Ninth Circuit, at the City of San Francisco within thirty (30) days from and after the date of this citation, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United States for the Southern District of California, Southern Division, from a final decree signed, filed, and entered on the first day of December, 1920, in that certain suit, being in equity No. E-26, wherein said William H. Cochran is complainant and appellee, and said William H. Cochran as trustee for Pacific Crude Oil Company intervening complainant and appellee, and Big Sespe Oil Company, a corporation, is defendant and appellant, to show cause, if any there by, why the decree rendered against the said appellant, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

WITNESS the Honorable Oscar A. Trippet, Judge of the United States District Court for the Southern District of California, this 5 day of January, A. D. 1921.

Trippet

DISTRICT JUDGE.

UNITED STATES DISTRICT JUDGE FOR THE
SOUTHERN DISTRICT OF CALIFORNIA.

Attest: Chas N. Williams
CLERK

~~Service of the within citation and~~ receipt of a copy of within citation is hereby admitted this 6th day of January, 1921.

Theodore Martin
Wm H. Cochran

ATTORNEYS FOR APPELLEES WILLIAM
H. COCHRAN INDIVIDUALLY AND WIL-
LIAM H. COCHRAN AS TRUSTEE.

Endorsed: Filed Jan. 25, 1921. Chas. N. Williams,
Clerk; by R. S. Zimmerman, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN
DIVISION.

WILLIAM H. COCHRAN, a cit-) BILL OF
izen of the State of New York,) COMPLAINT
) IN EQUITY.

Complainant,)

-versus-

NO. ———

BIG SESPE OIL COMPANY, a)
corporation formed, organized and)
existing under and by virtue of the)
laws of the State of California, and) To Redeem
a citizen and resident of the said) Real Property.
State; and E. G. McMARTIN,)
Sheriff of the County of Ventura,)
State of California, and also a cit-)
izen and resident of the said State)
of California.)

Defendants.)

TO THE HONORABLE THE JUDGES OF THE
DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN DIVISION:

WILLIAM H. COCHRAN, a citizen of the State
of New York, brings this his Bill of Complaint against
BIG SESPE OIL COMPANY, a corporation formed,

organized and existing under and by virtue of the Laws of the State of California, and a citizen and a resident of the said State of California and also residing within this Honorable Court's jurisdiction; and also against E. G. McMARTIN, Sheriff of the County of Ventura, State of California, and also a citizen and resident of the said State of California, and also residing within this Honorable Court's jurisdiction: and in, and by this Bill of Complaint alleges and complains as follows, to-wit:

FIRST: Jurisdiction of this case arises, and is given to this Honorable Court, by reason of the diversity of the citizenship of the parties hereto. Complainant is now, and always has been a citizen of the State of New York.

Complainant's hereinafter particularly mentioned and described assignor, Pacific Crude Oil Company, is a corporation formed, organized and existing under and by virtue of the Laws of the State of Delaware, and is also a citizen of the said State of Delaware.

Defendant, Big Sespe Oil Company, is a corporation formed, organized and existing under and by virtue of the Laws of the State of California; and the said corporation is a citizen of the said State of California, and is resident within the jurisdiction of this Honorable Court.

Defendant, E. G. McMartin, at every and all of the several times hereinafter mentioned and particularly referred to, was, ever since then has been, and still is the Sheriff of the County of Ventura, State of

California; and is also a citizen of the said State of California, and is resident within the jurisdiction of this Honorable Court. And the matter in controversy in this action, exceeds, exclusive of interest and costs, the sum, or value of Three Thousand Dollars (\$3,000.00)

SECOND: Heretofore, to-wit, on or about the second day of January, 1917, and in the certain action then pending in the Superior Court of the County of Ventura, State of California, wherein the aforesaid Big Sespe Oil Company, a corporation, was Plaintiff, and William H. Cochran, as Trustee for Pacific Crude Oil Company, a corporation, and Pacific Crude Oil Company, a corporation, were Defendants, the said Big Sespe Oil Company recovered and was awarded judgment against the said Pacific Crude Oil Company, a corporation, for the sum of Fifteen Thousand Dollars (\$15,000.00), together with interest thereon at the rate of Six per cent (6%) per annum, from March 30, 1914, and also for the costs of the said action. Thereafter, and on the said second day of January, 1917, judgment was docketed accordingly, in the office of the Clerk of the aforementioned Court, in Book 8 of Judgments, at page 140, for the certain sum of Seventeen Thousand Six Hundred Forty and 50/100 Dollars (\$17,640.50).

THIRD: On the second day of February, 1917, a Writ of Execution on the aforementioned judgment was issued out of and from the aforementioned Su-

perior Court of the County of Ventura, the same being directed and delivered to the Sheriff of the said County of Ventura. Said Writ of Execution directed the said Sheriff to make the aforementioned sum of Seventeen Thousand Six Hundred Forty and 50/100 Dollars (\$17,640.50) with interest thereon, and to satisfy the aforesaid judgment therefor, out of the personal property of the said judgment debtor, Pacific Crude Oil Company, and in the event that sufficient personal property of this said judgment debtor could not be found, then out of the real property in the said County of Ventura, State of California, belonging to said judgment debtor, Pacific Crude Oil Company, on the day whereon the said judgment was docketed as aforesaid, or at any time thereafter.

FOURTH: By virtue of and pursuant to the aforementioned Writ of Execution, and to satisfy the certain aforementioned judgment, the then said Sheriff of the County of Ventura, State of California, E. G. McMartin, one of the defendants herein, on the third day of March, 1917, sold, at public auction, all the right, title and interest of the said judgment debtor, Pacific Crude Oil Company, of, in and to the certain real property situate, lying and being in the aforementioned County of Ventura, State of California, which is bounded and described as follows, to-wit:

The West half of lot No. 6 and lots numbered 7 and 9 of Section 1 in Township 4 North, range 20 West, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in lot 9, section 1, in Township 4 North, Range 20 West, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the Northwest corner of the Kentuck Oil Claim as said claim is described in that patent executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898, and recorded in Book 2, page 336, of Patents, records of Ventura County; thence

1st: East Five (5) chains along the North line of said Kentuck Oil Claim; thence

2nd: North at right angles Three (3) chains; thence

3rd: North Sixty degrees (60°) West 4 chains; thence

4th: South $56-1/2^{\circ}$ West to a point 4 chains North of the center of said section 1, Township 4 North, Range 20 West, which point is also the Northwest corner of the Southeast quarter of said section 1; thence

5th: South 4 chains along the West line of said Southeast quarter of said section 1; thence

6th: East at right angles 5.95 chains to the West line of said Kentuck Oil Claim; thence

7th: North along the West line of said Kentuck Oil Claim to place of beginning, containing 9 acres more or less.

The New York Oil and Placer Mining Claims, located by O. P. Clark and Lee C. Gates, January 27,

1894, and recorded in Book 2, page 245, of Mines, Records of Ventura County, and included in the location of the "Nellie Belle" placer mining claim hereafter referred to.

Also all that part of the Henry Gage Placer Mining Claim not included in Lot 7, section 1, Township 4 North, Range 20 West, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in Book 3, page 154, of Mines, Records of Ventura County.

Also the Elwood Placer Mining Claim located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in Book 19, page 315, of Mines, Records of Ventura County.

Also the "Nellie Belle" placer mining claim, located by T. M. Hornada, E. F. Coldwell, and J. A. Clampitt, April 1, 1910, and recorded in Book 19, at page 315 of Mines, Records of Ventura County.

FIFTH: At the said aforementioned sale, the said real property was bid in by, and was sold to the aforementioned judgment creditor, Big Sespe Oil Company, for the sum of Seventeen Thousand Three Hundred Forty and 50/100 Dollars (\$17,340.50). And the said Sheriff thereupon gave to the said purchaser, a Certificate of such sale; and also filed a duplicate thereof for record in the office of the County Recorder of the aforementioned County of Ventura, State of California, in which said office it was recorded on the fourteenth day of March, 1917, in Book 4, of Certificates of Sale, at pages 75 and following. Said Certificate

of Sale, and the said duplicate thereof, were as required by the Statutes of the said State of California in such cases made and provided, and showed and declared, INTER ALIA, that the aforementioned real property, thus sold under execution as hereinbefore alleged and set forth, "is subject to redemption in lawful money of the United States, pursuant to the Statutes in such cases made and provided"; as by reference to the said Certificate of Sale, which will be produced on the trial of this action, will more fully and at large appear.

SIXTH: Immediately after said aforementioned sale, and the delivery to it of the aforementioned Certificate of Sale thereunder, the aforesaid purchaser, Big Sespe Oil Company, one of the defendants herein, entered upon and took possession of the aforementioned real property. And Complainant alleges, on information which he verily believes to be true, and, therefore, alleges it to be the fact, that said Defendant Company, ever since the said third day of March, 1917, continuously has been, and still is, in such possession of the said real property.

SEVENTH: The hereinbefore described real property comprises some two hundred and forty-five (245) acres, or thereabouts, of valuable oil producing lands, of which something in excess of eighty-one (81) acres are patented lands, the remainder thereof being covered by the certain Placer Mining Claims hereinbefore particularly described.

From the said real property, crude petroleum, for many years continuously has been, and still is, being extracted and produced.

EIGHTH: At the time of the aforementioned sale of the said real property, and for many years prior thereto, there were, and ever since has been, and there still are on the said real property, two regularly and continuously oil producing wells, which said wells, Complainant alleges, on information which he verily believes to be true, and, therefore, alleges it to be the fact, have been continuously operated by the said Defendant Company, since its aforementioned entry upon the real property, on the said third day of March, 1917.

NINTH: Complainant alleges, on information which he verily believes to be true, and, therefore, alleges it to be the fact, that, since its entry upon the said real property, as hereinbefore alleged and set forth, the said Defendant Big Sespe Oil Company, has continuously produced and extracted crude petroleum from the said real property, has regularly and continuously sold the same, and from such sales has realized certain sums of money. Complainant has no knowledge, nor information sufficient to form a belief as to the total amount of such moneys thus received and collected by the said Defendant Company from the sale of the crude petroleum thus produced and extracted from the said real property, but alleges that the same amounts to a very large and considerable sum.

TENTH: Such moneys and profits as have thus been received and collected by the said Defendant Company from the said real property were, always have been, and still are, under the Laws of the State of California, a credit upon the redemption money, likewise required to be paid by the said Laws, to redeem the said real property from the aforementioned sale thereof under execution.

ELEVENTH: Before the expiration of the time allowed under the Statutes of the said State of California, in such cases made and provided, for the redemption of the said real property from the sale thereof under execution, as hereinbefore alleged and set forth, and at several times, on several different days long prior to the expiration of the said time for such redemption, the said judgment debtor, Pacific Crude Oil Company, requested and also demanded, both orally and in writing, from the said judgment creditor and purchaser, Big Sespe Oil Company, a statement of such moneys and profits as the said purchaser thus, as hereinbefore alleged and set forth, had received and collected from the said real property, from and after the aforementioned sale thereof under execution, on March 3, 1917. The said purchaser likewise at said several different times promised to make and deliver such statement to the said judgment debtor; but the said purchaser always failed and neglected to make and deliver such promised statement, or any statement relative thereto.

TWELFTH: On March 1st, 1918, and before the expiration of the time allowed for such aforementioned redemption of the said real property, under the Statutes of the said State of California, in such cases made and provided, the aforementioned judgment debtor, Pacific Crude Oil Company, under and pursuant to the provisions of Section 707 of the Code of Civil Procedure of the said State of California, duly demanded in writing of the aforementioned judgment creditor and purchaser, Big Sespe Oil Company (one of the defendants in this action), a written and verified statement of the amounts of such rents and profits thus received by it, from the said real property, as hereinbefore alleged and set forth. Said written demand was duly served on, and delivered to, the said judgment creditor and purchaser, Big Sespe Oil Company, on the 1st day of March, 1918. A copy of the said written demand is annexed to this Bill of Complaint, marked "DEMAND FOR STATEMENT OF RENTS AND PROFITS"; and it is respectfully prayed that the same be made and considered a part of this Bill of Complaint, with the same force and effect as if herein set forth at length, and in TOTIDEM VERBIS.

A copy of the said written demand was also, on the 1st day of March, 1918, delivered to the aforesaid Sheriff of the County of Ventura, State of California, by the said judgment debtor, Pacific Crude Oil Company, together with a written notice of the service

thereof on the said judgment creditor and purchaser, Big Sespe Oil Company, as hereinbefore alleged and set forth; and also further notifying and directing the attention of the said Sheriff to the fact that, under and pursuant to the provisions of the aforementioned Section 707 of the Code of Civil Procedure of the said State of California, and by reason and because of such written demand, the time for the redemption of the said real property from the sale thereof under execution, as also hereinbefore alleged and set forth, had been and thereby was extended, as, and for the time, or period by the said Section 707 of the California Code of Civil Procedure also provided, and directed; and also further notifying the said Sheriff that, pending, and until the expiration of such extended time, or period for the aforementioned redemption of the said real property, he, the said Sheriff, should not make, execute, nor deliver, excepting at his peril, any deed, or conveyance thereof, to the said judgment creditor and purchaser, Big Sespe Oil Company.

THIRTEENTH: Said Big Sespe Oil Company, the aforementioned judgment creditor, and purchaser of the said real property, for a period of one month from and after such last hereinbefore written demand, failed and refused, and still has failed and refused to give such demanded statement of the rents and profits thus received by it from the said real property, as hereinbefore alleged and set forth.

FOURTEENTH: On or about the twenty-ninth day of August, 1918, the aforementioned Sheriff of

the County of Ventura, State of California, E. G. McMartin, (one of the defendants herein), made, executed and delivered unto the aforesaid judgment creditor and purchaser, Big Sespe Oil Company, a corporation, a certain instrument in writing, without date, but purporting to have been executed and acknowledged by the said Sheriff on the said twenty-ninth day of August, 1918, wherein and whereby the said Sheriff purported, pretended and attempted to grant, bargain, sell, convey and confirm unto the aforementioned judgment creditor and purchaser, Big Sespe Oil Company, a corporation, and one of the defendants in this action, "All the estate, right, title and interest which the said judgment debtor, Pacific Crude Oil Company, a corporation, had on the 3rd day of February, 1917, or at any time afterwards, or now has, of, in and to the" certain real property hereinbefore particularly described and referred to. Said written instrument was thereafter, and on the third day of September, 1918, recorded in the office of the Recorder of the aforementioned County of Ventura, State of California, in Book 163, of Deeds, at pages 340, and following.

FIFTEENTH: At the time said last hereinbefore mentioned instrument was made and delivered as aforesaid, the time allowed by and under the Statutes of the said State of California, in such cases made and provided, for the redemption of the said real property from the sale thereof under execution, as hereinbefore alleged and set forth, had not expired; but

on the contrary, and by and because of the several matters and things hereinbefore particularly alleged and set forth, said time for redemption was then and there still open and running, and had been extended for, and until the expiration of the period, or time particularly specified and provided for by the aforementioned Section 707 of the California Code of Civil Procedure. Said time for such redemption has not yet expired under the said statutes; and the aforesaid judgment debtor, Pacific Crude Oil Company, or its assigns, is still lawfully entitled to make such redemption of the said real property.

SIXTEENTH: Said last hereinbefore mentioned instrument from the said Sheriff of the County of Ventura, State of California, was made and given without any due authority of law; and was in direct and absolute violation of, and contrary to, the provisions and directions of the Statutes of the said State of California, in such cases made and provided for, at least in so far as to, in any way, nullify, destroy, affect, modify, or limit the hereinbefore alleged legal and statutory right of the aforesaid judgment debtor, Pacific Crude Oil Company, or its assigns, to redeem the real property particularly described in the said instrument, as also hereinbefore alleged and set forth. And, if the said instrument has any force and effect whatsoever, the same is subject to the said right of redemption of the said real property.

SEVENTEENTH: In, and by the certain hereinbefore mentioned and described instrument in writ-

ing, executed the said twenty-ninth day of August, 1918, the aforementioned Sheriff of the County of Ventura, State of California, claims pretends, and asserts to have made, executed and delivered the same unto the aforesaid judgment creditor and purchaser, Big Sespe Oil Company, a corporation, pursuant to, and "by virtue of" a certain peremptory Writ of Mandate issued, under date of August 29th, 1918, out of the aforementioned Superior Court of the County of Ventura, State of California wherein and whereby he, the said Sheriff, had been "directed and ordered to make and execute this Deed" (The instrument just hereinbefore referred to). All of which, by reference to the said instrument, which will be produced on the trial of this action, will more fully and at large appear.

And Complainant alleges, and on the trial of this action will show and prove that neither his assignor, Pacific Crude Oil Company, nor Complainant himself, was a party to the proceedings in which the said Writ of Mandate was issued; and that, therefore, neither of them had any opportunity to present to the said Honorable Superior Court of the County of Ventura, State of California, the several matters and facts in this Bill of Complaint particularly alleged and set forth.

And Complainant therefore further alleges that as against the said Pacific Crude Oil Company, and, or against Complainant, the aforesaid Writ of Mandate did not legally constitute, and was not, and is not

any legal warrant, or authority for the making, executing, or delivering of the aforementioned instrument, executed the said twenty-ninth day of August, 1918. And further that, at the time of the making, executing and delivering thereof, the said instrument was, ever since then has been, and still is of no legal force, or effect, as against the said Pacific Crude Oil Company, or Complainant.

EIGHTEENTH: Said peremptory Writ of Mandate, at the time of its issuance as aforesaid, was, ever since then has been, and still is invalid, and of no legal force, or effect as against either the said Pacific Crude Oil Company, or its assignee, this complainant, in that, and because neither of them was a party to the proceedings in which the said Writ of Mandate was issued; and further also because, in its aforementioned Petition, the hereinbefore alleged matters and facts, which were then and there materially relevant to the question of the legal issuance of the said Writ of Mandate, were suppressed by the aforesaid petitioner, Big Sespe Oil Company; and further also because certain of the averments in the said Petition were, as matters of fact, and also at law, false and untrue, and were designed and intended to mislead the Honorable Court to which the said Petition was presented, and to wrongfully procure the issuance of the said Writ of Mandate, before the expiration of the time allowed for the redemption of the said real property, as is hereinbefore particularly alleged and set forth.

On the 23rd day of July, 1918, the aforesaid judgment creditor and purchaser, Big Sespe Oil Company, a corporation, on its certain "Petition for Writ of Mandate", verified the 10th day of July, 1918, instituted and brought a certain proceeding in the aforementioned Superior Court of the County of Ventura, State of California, which said proceeding was then and is designated as "Case No. 6567" in the files and records of the said Court, and is entitled "Big Sespe Oil Company, a corporation, Petitioner, -vs- E. G. McMartin, Sheriff of the County of Ventura, State of California, Respondent". And in this proceeding the aforementioned peremptory Writ of Mandate, under date of August 29, 1918, was made and issued.

In the said Petition, the said Petitioner alleged, INTER ALIA, "that the period for redemption (of the hereinbefore mentioned real property from the said sale thereof under execution) to-wit, one year from March 3, 1917, has expired"; as by reference to the said Petition, which will be produced on the trial of this action, will more fully and at large appear.

The said allegation of the said Petition was then, always has been, and still is false and untrue, in that the said period, or time for such redemption had not expired at the time of the making and filing of the said Petition. And such period or time has not even yet expired.

The said allegation of the said Petition was further false and untrue in that the period, or time for such aforementioned redemption was not limited to, or al-

lowed by, the Statutes of the State of California, relative thereto, only to and within "one year from March 3, 1917", as in the said Petition alleged.

At the time the said Petition was verified and filed, as hereinbefore alleged and set forth, the said Petitioner well knew, both as a matter of fact and law, that, prior to the expiration of the specified "one year from March 3, 1917", it had been duly served with the certain hereinbefore mentioned demand in writing for a written and verified statement of the amounts of moneys and profits received by it as aforesaid from the said real property; that it had failed and refused to give such demanded statement; and further that, by reason and because of such failure and refusal, the time of one year ordinarily allowed for such aforementioned redemption, and the right to make the same was extended by and under the Statutes of the said State of California, relative thereto, as hereinbefore particularly alleged and set forth; and that such extended time, or period had not then expired.

In the said Petition, it was further alleged that "said Pacific Crude Oil Company has no legal existence and that it forfeited its Charter to the State of Delaware * * * on January 28, 1918". The allegation that the said Pacific Crude Oil Company then had no legal existence, was then and there false and untrue. And the contrary was then, ever since has been, and still is the fact. The said Petitioner well knew, at the time of its making and filing the said Petition, that, while, as is also alleged in the said Petition, the said Com-

pany had forfeited its Charter to the State of Delaware, (under the laws of which said State that Company was incorporated), the legal existence of the said Company was not thereby completely terminated, but that, on the contrary, the Statutes of the said State of Delaware, providing for, and relative to such forfeiture, and more particularly Section 40, of the General Corporation Laws of the said State of Delaware, as found in Chapter 65 of the Revised Statutes of 1915, of the said State, and as amended and approved March 8, A. D. 1915, and further amended and approved March 20, and April 9, A. D. 1917, directly, distinctly and specifically provided that, in spite of such forfeiture, the said Company "shall nevertheless be continued for the term of three years", for certain specific and specified purposes, which said purposes included the aforementioned redemption of the aforesaid real property, and the bringing of any and all necessary actions and proceedings in connection therewith. All of which said provisions of the said Statutes, will more fully and at large appear by reference thereto. And it is respectfully prayed that the said Statutes be made and considered a part of this Bill of Complaint, and as pleaded herein, with the same force and effect as if herein set forth and pleaded at length, and in TOTIDEM VERBIS.

NINETEENTH: Said last hereinbefore particularly mentioned and referred to allegations of the said Petition were not only false and untrue, as hereinbefore alleged and set forth, but the said Petitioner

also well knew them to be false and untrue at the time of its making the same.

Said false and untrue allegations, and the concealment and suppression of the true and complete facts and the law as to the extension of the time allowed to the said judgment debtor, Pacific Crude Oil Company, within which to make the aforementioned redemption of the said real property, as well as to the legal continuance of the said Company, even after the said forfeiture of its Charter, as hereinbefore particularly alleged and set forth, were, each and every of them, made and done by the said Petitioner, with the purpose and intent of misleading and deceiving the aforementioned Honorable Court, to which the said Petition was presented, as hereinbefore alleged.

TWENTIETH: Said aforementioned false and untrue allegations of the said Petition, and such aforementioned concealment and suppression of the true and complete facts and law, as hereinbefore particularly alleged and set forth, were intended to and actually did deceive and mislead the aforementioned Honorable Court, and induced and caused the said Court to grant and issue the aforementioned peremptory Writ of Mandate, which otherwise could not, and would not have been granted and issued, if the true and full facts, and the law relative thereto had been truthfully, fairly and properly presented by the said Petitioner, Big Sespe Oil Company.

TWENTY-FIRST: By reason of the several matters and things hereinbefore specifically and particu-

larly alleged and set forth, the said peremptory Writ of Mandate, and all proceedings and things had and done thereunder, including the aforementioned written instrument from the said Sheriff of Ventura County State of California, executed the 29th day of August, 1918, were and are of no force, or effect, to prejudice, or alter the hereinbefore particularly set forth and alleged rights of the said Pacific Crude Oil Company, or its assignee, this Complainant.

TWENTY-SECOND: Heretofore, to-wit, on the eleventh day of June, 1919, and by a certain instrument in writing bearing date of that day, the aforesaid judgment debtor, Pacific Crude Oil Company, duly sold, assigned and conveyed unto the Complainant herein, William H. Cochran, any and all of the certain hereinbefore described redemption and right of redemption, which the said judgment debtor at any time had, then had, or might thereafter have, of, in and to the aforesaid real property, from the sale thereof under execution, as hereinbefore particularly alleged and set forth.

Complainant, since the said eleventh day of June, 1919, ever has been, and still is, lawfully entitled to make such aforementioned redemption of the said real property.

TWENTY-THIRD: Complainant desires and intends to make such aforementioned redemption of the said real property from the sale thereof under execution as hereinbefore alleged and set forth, but is unable

to determine the amount necessary and required by law to make the same, without and until the said judgment creditor and purchaser of the said real property. Big Sespe Oil Company, has given the hereinbefore mentioned legally demanded statement, and fully accounted for the amounts of the moneys and profits received and collected by it from the said property, since the aforementioned third day of March, 1917, and which said profits, under the Statutes of the said State of California, relative thereto, are a credit upon the redemption money likewise required by the said Statutes to be paid on such redemption.

TWENTY-FOURTH: Material and irreparable loss and damage will be sustained and suffered by Complainant, unless and without he be permitted to redeem the said real property from the aforementioned sale thereof under execution; and also to that end, that the aforementioned written instrument from the said Sheriff of Ventura County, State of California, to Big Sespe Oil Company, one of the defendants herein, either to be declared inoperative, null and void, and be also cancelled and discharged of record, or the said Big Sespe Oil Company be required and compelled, by mandatory injunction, to execute and deliver unto Complainant a proper deed for the said real property, upon the receipt of such moneys, if any, as this Honorable Court may find due and legally payable on such redemption.

WHEREFORE, and as he can have no adequate and complete relief at Law, Complainant comes into

this Honorable Court, and prays for this Honorable Court's equitable intervention, relief, and judgment, adjudging and decreeing as follows, to-wit:

FIRST: That the time, or period, allowed by and under the Statutes of the said State of California, within which redemption of the certain real property hereinbefore in this Bill of Complaint particularly described and referred to, from the aforesaid sale thereof under execution, has not expired, or terminated. And further that Complainant, as the assignee of and the successor in interest to, the aforesaid judgment debtor, Pacific Crude Oil Company, is lawfully entitled to make such redemption, in the form and manner, also by the Statutes of the said State of California, directed and provided for.

SECOND: That the said Defendant, Big Sespe Oil Company, shall make and state an account of any and all moneys, rents, and profits received and collected by it from the certain real property hereinbefore in this Bill of Complaint particularly described and referred to, since the aforementioned sale thereof under execution on the said third day of March, 1917.

THIRD: That any and all moneys, rents, and profits thus received and collected as aforesaid, by the said judgment creditor, purchaser, and defendant, Big Sespe Oil Company, from the certain hereinbefore mentioned and described real property, since the aforesaid sale thereof, under execution, on the said third day of March, 1917, are a credit upon the redemption

money provided and required to be paid under the Statutes of the said State of California, relative thereto, for, and upon such redemption of the said real property, as is hereinbefore, in this Bill of Complaint, more particularly alleged and set forth.

FOURTH: The sum, or amount of money, which Complainant is lawfully required to, and must pay to the aforesaid judgment creditor, purchaser, and defendant, Big Sespe Oil Company, for, upon and to make and effectuate such aforementioned redemption of the said real property, from the aforesaid sale thereof, under execution, as hereinbefore in this Bill of Complaint particularly alleged and set forth.

FIFTH: That the certain hereinbefore mentioned proceedings in which the certain also hereinbefore mentioned and described peremptory Writ of Mandate, dated August 29, 1918, was made and issued, and also the said Writ of Mandate, are ineffectual in any way whatsoever, to affect the rights of the Complainant herein, inasmuch as neither the Complainant, nor his assignor, Pacific Crude Oil Company, were parties to the said proceedings.

SIXTH: That the certain instrument in writing, or so-called Deed, hereinbefore in this Bill of Complaint particularly described and referred to, executed by the said Sheriff of the County of Ventura, State of California, on the twenty-ninth day of August, 1918, was and is void AB INITIO, on the ground that the same was made, executed and delivered without any, or due authority of law, and also contrary

to the provisions of the laws and Statutes of the said State of California, in such cases made and provided for; and also on the further ground that the same was procured by fraud. And also further adjudging and decreeing either that the said instrument, or Deed, shall be returned by the said Defendant, Big Sespe Oil Company, and be cancelled and destroyed; and that the same on the records of the aforementioned Recorder of the County of Ventura, State of California, shall also be so marked, cancelled and destroyed, as such a void instrument; or that the said Big Sespe Oil Company execute and deliver unto Complainant a full and complete title to the certain real property in this Bill of Complaint particularly described.

SEVENTH: Such other, further, general and equitable relief in the premises as to this Honorable Court shall seem meet, and as this Complainant may lawfully be entitled to, and, in equity, should have.

Theodora Martin

Solicitor for Complainant.

Wm. H. Cochran

Complainant in person.

DEMAND FOR STATEMENT OF RENTS AND
PROFITS.

BIG SESPE OIL COMPANY, a Corporation,

Sirs:

WHEREAS, under an execution issued to him out of and from the Superior Court of the State of Cali-

fornia, in and for the County of Ventura, in a certain action brought in the said Court, and wherein said Big Sespe Oil Company, a Corporation, was Plaintiff, and William H. Cochran, as Trustee for Pacific Crude Oil Company, a Corporation, and Pacific Crude Oil Company, a Corporation, were defendants, the Sheriff of the County of Ventura, in the State of California, on or about the 3d day of March, 1917, sold unto the said Big Sespe Oil Company, a Corporation, the certain real property and placer mining claims particularly described in the Certificate of Sale thereof, then and there given by the said Sheriff unto the said purchaser; and

WHEREAS, said Big Sespe Oil Company, as such aforementioned purchaser, since the time of the aforementioned sale, has received certain rents, or profits from the aforementioned real property and placer mining claims; and

WHEREAS, the aforementioned real property and placer mining claims are subject to redemption under the Laws of the State of California, in such cases made and provided for; and the aforementioned rents and profits so received by the said purchaser, as aforesaid, are likewise a credit upon the money necessary to be paid to make such redemption;

YOU WILL TAKE NOTICE, that, under and pursuant to the provisions of Section 707 of the Code of Civil Procedure of the State of California, and also of any and all other Statutes and Laws pertinent thereto, demand, in writing, is hereby made upon you, as

the said aforementioned purchaser, and also as judgment creditor, that you make, give and deliver a written and verified statement of the amounts of such aforementioned rents and profits, thus received by you as aforesaid.

Said statement should be served on William H. Cochran, care of Angelus Hotel, Los Angeles, California.

Dated: Los Angeles, March 1, 1918.

Yours etc.

PACIFIC CRUDE OIL CO.

by

William H. Cochran,

its attorney

William H. Cochran, as

Trustee for Pacific Crude Oil Company.

William H. Cochran

Endorsed: Filed Jul. 2, 1919. Chas. N. Williams,
Clerk By R. S. Zimmerman, Deputy Clerk

[TITLE AS BEFORE.]

Motion to Dismiss.

Come now the defendants in the above entitled cause, by their solicitors, and move to dismiss the complainant's bill, and for cause show:

1. That the complainant has a plain, speedy, adequate and complete remedy at law.

2. That the bill fails to state a cause of action in equity against these defendants, or either of them.

3. That the bill fails to allege any facts showing that complainant's assignor, Pacific Crude Oil Company, was within the jurisdiction of the Superior Court of the State of California, in and for the County of Ventura, or that said Pacific Crude Oil Company was an indispensable or necessary or proper party to the suit mentioned and described in said bill in the said Superior Court of the State of California, in and for the County of Ventura, begun and prosecuted by defendant herein, Big Sespe Oil Company, against defendant herein, E. G. McMartin, as Sheriff of the County of Ventura, State of California; and the bill further fails to allege that complainant's assignor, Pacific Crude Oil Company, had no notice of such suit and proceeding and the issuance of a peremptory writ of mandate therein.

4. That the bill shows on its face that the judgment debtor, Pacific Crude Oil Company, did not before the expiration of the time allowed for redemption of the real property referred to and described in said bill, demand in writing of the defendant, Big Sespe Oil Company, a written and verified statement of the amounts of the rents and profits received by said judgment debtor, Big Sespe Oil Company, defendant herein, as provided by Section 707 of the Code of Civil Procedure of the State of California.

5. That the complainant is guilty of laches, as appears in and by the bill exhibited herein, for the reason that complainant has delayed in bringing this

action for a period of approximately ten (10) months from and after the date of the execution of a deed to the real property in said bill described, by defendant, E. G. McMartin, as Sheriff of the County of Ventura, State of California, to the defendant, Big Sespe Oil Company, and it does not appear from said bill that there is a reasonable excuse for such delay, either by reason of the fraudulent concealment of the facts by the defendants, or by reason of the inability of the complainant to sooner discover the facts.

WHEREFORE defendants pray that the bill be dismissed with their reasonable costs, and that they be permitted to go without day.

Alton M. Cates,

Dudley W. Robinson,

SOLICITORS FOR DEFENDANTS.

Endorsed: Received copy of the within motion this 21st day of July 1919 Theodore Martin Attorney for complainant

Filed Jul 21 1919 Chas. N. Williams, clerk By Maury Curtis Deputy Clerk.

[TITLE AS BEFORE.]

Notice of Motion to Dismiss.

TO COMPLAINANT AND TO THEODORE MARTIN, ESQUIRE, HIS SOLICITOR:

You will please take notice that the defendants in the above entitled cause will, on Monday, the 4th day of August, 1919, at the hour of 10 o'clock A.M., or as soon thereafter as counsel can be heard, move

the Court to dismiss said action. Said motion will be made upon the records, files and papers in said cause, and upon the grounds specified in the motion to dismiss heretofore served and filed herein.

Dated at Los Angeles, California, July 28, 1919.

Alton M. Cates,

Dudley W. Robinson,

SOLICITORS FOR DEFENDANTS.

Endorsed: Received copy of the within notice this 28th day of July 1919 Theodore Martin attorney for complainant

Filed Jul 28 1919 Chas. N. Williams clerk By Maury Curtis Deputy Clerk.

At a stated term, to wit: the July Term, A. D., 1920, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the Eighth day of September, in the year of our Lord One thousand nine hundred and nineteen:

Present:

The Honorable OSCAR A. TRIPPET, District Judge.

William H. Cochran,	Plaintiff,)	
)	
	vs.	)	No. E-26 Eq.
)	
Big Sespe Oil Co.,	Defendant.)	

This cause coming on at this time for the hearing of the motion to dismiss, Theodore Martin, Esq.,

counsel for the plaintiff and Alton M. Cates, Esq., counsel for the defendant present in open Court. Upon agreement of counsel, it is by the Court ordered that this cause be submitted on briefs at 5, 5 and 5 days, the defendant to file the first brief. This cause is continued to the 22nd day of September, 1919.

At a stated term, to wit: the July Term, A.D., 1919, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Monday, the Twenty-ninth day of September, in the year of our Lord One thousand nine hundred and nineteen;

Present:

The Honorable OSCAR A. TRIPPET, District Judge.

William H Cochran,	Plaintiff,)	
)	
vs.	)	No. E 26 Eq.
)	
Big Sespe Oil Company,	Defendant.)	

This cause coming on for hearing on motion to dismiss; Theodore Martin, Esq., appearing as counsel for plaintiff; Alton M. Cates, Esq., appearing as counsel for defendant; and said cause having been argued on behalf of defendant, by Alton M. Cates, Esq., of counsel for defendant; an order is entered denying said motion to dismiss, and granting defendant, with the consent of counsel for plaintiff, fifteen (15) days to answer.

[TITLE AS BEFORE.]

Order Granting Leave to File Interrogatories.

Good cause appearing therefor, and on motion of Cates & Robinson, Esquires, solicitors for defendants, leave is hereby granted to said defendants to file with the Clerk of this Court, under and pursuant to the provisions of Equity Rule No. 58, interrogatories in writing for the discovery by the complainant of facts and documents material to the defense of the cause, a copy of which interrogatories is hereto annexed.

Dated December 16, 1919.

Trippet
JUDGE.

In the District Court of the United States, for the Southern District of California, Southern Division.

William H. Cochran, a citizen of the state of New York, complainant, vs. Big Sespe Oil Company, a corporation formed, organized and existing under and by virtue of the laws of the State of California, and a citizen and resident of the said state; and E. G. McMartin, sheriff of the county of Ventura, state of California, and also a citizen and resident of the said state of California, defendants.

No. E-26 in equity.

[TITLE AS BEFORE.]

Interrogatories.

INTERROGATORIES ON BEHALF OF DEFENDANTS ADDRESSED TO THE COMPLAINANT, WILLIAM H. COCHRAN.

INTERROGATORY NO. 1: Give the date and place of organization of Pacific Crude Oil Company, the corporation named in the bill of complaint in the above entitled cause.

INTERROGATORY NO. 2: Who were the organizers of said corporation?

INTERROGATORY NO. 3: Give the names, official titles and respective residential and business addresses of all the officers and all the directors of said corporation from March 13, 1914, to March 30, 1914.

INTERROGATORY NO. 4: Where was the main office or principal place of business of said corporation between said March 13, 1914, and March 30, 1914, including the street and room number?

INTERROGATORY NO. 5: Between said March 13, 1914, and March 30, 1914, was said main office or principal place of business occupied solely by said Pacific Crude Oil Company, its officers and agents?

INTERROGATORY NO. 6: If the office mentioned in the foregoing fifth interrogatory was occupied or shared by any other person or persons, firms or corporations, give the name or names and business or businesses of such person or persons, firms or corporations.

INTERROGATORY NO. 7: Where were the books of said Pacific Crude Oil Company between March 13, 1914, and March 30, 1914, including the minute book, stock certificate book, stock ledger, stock journal, books of account and records of correspondence?

INTERROGATORY NO. 8: Give the names, official titles and respective residential and business addresses of all the officers and all the directors of said corporation from March 30, 1914, to January 2, 1917.

INTERROGATORY NO. 9: Where was the main office or principal place of business of said corporation between said March 30, 1914, and January 2, 1917, including the street and room number?

INTERROGATORY NO. 10: Between said March 30, 1914, and January 2, 1917, was said main office or principal place of business occupied solely by said Pacific Crude Oil Company, its officers and agents?

INTERROGATORY NO. 11: If the office mentioned in the foregoing tenth interrogatory was occupied or shared by any other person or persons, firms or corporations, give the name or names and business or businesses of such person or persons, firms or corporations.

INTERROGATORY NO. 12: Where were the books of said Pacific Crude Oil Company between March 30, 1914, and January 2, 1917, including the minute book, stock certificate book, stock ledger, stock journal, books of account and records of correspondence?

INTERROGATORY NO. 13: Give a copy of any written document made or executed by or for said corporation prior to January 2, 1917, authorizing or purporting to authorize you to represent the said Pacific Crude Oil Company, a corporation, either as attorney, agent, trustee, or in any other capacity.

INTERROGATORY NO. 14: Is there in existence any written document in anywise answering the description set forth in the thirteenth interrogatory which is not now in your possession, and if so, state in whose possession it is at present, and when you last saw it, and give the substance of its contents to the best of your recollection.

INTERROGATORY NO. 15: Give the names, official titles and respective residential and business addresses of all the officers and all the directors of said corporation from January 2, 1917, to January 28, 1918.

INTERROGATORY NO. 16: Where was the main office or principal place of business of said corporation between said January 2, 1917, and January 28, 1918?

INTERROGATORY NO. 17: Between said January 2, 1917, and January 28, 1918, was said main office or principal place of business occupied solely by said Pacific Crude Oil Company, its officers and agents?

INTERROGATORY NO. 18: If the office mentioned in the foregoing seventeenth interrogatory was occupied or shared by any other person or persons,

firms or corporations, during any of the time therein specified, give the name or names and business or businesses of such person or persons, firms or corporations.

INTERROGATORY NO. 19: Where were the books of said Pacific Crude Oil Company between January 2, 1917, and January 28, 1918, including the minute book, stock certificate book, stock ledger, stock journal, books of account and records of correspondence?

INTERROGATORY NO. 20: Give a copy of any written document made or executed by or for said corporation between January 2, 1917, and January 28, 1918, authorizing or purporting to authorize you to represent the said Pacific Crude Oil Company, a corporation, either as attorney, agent, trustee, or in any other capacity.

INTERROGATORY NO. 21: Is there in existence any written document in anywise answering the description set forth in the twentieth interrogatory which is not now in your possession, and if so, state in whose possession it is at present, and when you last saw it, and give the substance of its contents to the best of your recollection?

INTERROGATORY NO. 22: Give the names, official titles and the respective residential and business addresses of all the trustees or directors of said Pacific Crude Oil Company, since January 28, 1918.

INTERROGATORY NO. 23: State the name of the person in whose possession the books and records

of said corporation are at the present time, together with his address or the place at which said books may be found, including in your answer a statement as to the location of the following books and records: the minute book, stock certificate book, stock ledger, stock journal, books of account and records of correspondence.

INTERROGATORY NO. 24: Do you know Charles H. Burr?

INTERROGATORY NO. 25: If your answer to the foregoing twenty-fourth interrogatory shall be in the affirmative, give said Burr's business and residential address.

INTERROGATORY NO. 26: What connection has Charles H. Burr had with the Pacific Crude Oil Company from the time of its incorporation to the present, either as attorney, agent, officer, director or in any other capacity?

INTERROGATORY NO. 27: Has Charles H. Burr any interest in the above entitled action, and if so state in detail what it is.

INTERROGATORY NO. 28: Are you interested financially or by official relation or claim of ownership or joint enterprise in any investment, business venture, business, firm or corporation with said Charles H. Burr, and if so, state in detail the nature of such relation and interest?

INTERROGATORY NO. 29: Have you formerly been interested or associated with said Charles H.

Burr, and if so state the nature of the relation and the interest in each case?

INTERROGATORY NO. 30: Give a copy of any written document made or executed by or for said corporation, or by or for the trustees or directors of said corporation, subsequently to the 28th day of January, 1918, authorizing or purporting to authorize you to represent the said Pacific Crude Oil Company, a corporation, either as attorney, agent, trustee or in any other capacity.

INTERROGATORY NO. 31: Is there in existence any written document in anywise answering the description set forth in the thirtieth interrogatory which is not now in your possession, and if so state in whose possession it is at present and when you last saw it, and give the substance of its contents to the best of your recollection?

INTERROGATORY NO. 32: Give a copy of any assignment of the or any interest of Pacific Crude Oil Company in or to the property described in the bill of complaint, either as redemptioner or otherwise.

INTERROGATORY NO. 33: Is there in existence any written document in anywise answering the description set forth in the thirty-second interrogatory which is not now in your possession, and if so, state in whose possession it is at present and when you last saw it, and give the substance of its contents to the best of your recollection?

INTERROGATORY NO. 34: Give copies of all correspondence pertaining or relating to the business

of the Pacific Crude Oil Company in California, as to its ownership or claim of ownership of or in the property described in the bill of complaint which is in your possession.

INTERROGATORY NO. 35: Is there in existence any correspondence pertaining to the business of Pacific Crude Oil Company in anywise answering the description set forth in the thirty-fourth interrogatory which is not now in your possession, and if so state in whose possession it is at present, and when you last saw it, and give the substance of its contents to the best of your recollection.

NOTE: The foregoing interrogatories numbered 1 to 35, inclusive, are addressed to and to be answered by the complainant, William H. Cochran.

Endorsed: Filed Dec 16 1919 Chas. N. Williams,
clerk Ernest J. Morgan deputy

[TITLE AS BEFORE.]

SIRS:

YOU WILL PLEASE TAKE NOTICE that on the 5th day of January, 1920, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, at his chambers in the Federal Building, in the city of Los Angeles, state of California, the annexed objections of the complainant to the therein particularly specified interrogatories addressed to him, on behalf of the defendants, will be presented to the Honorable Oscar A. Trippet, District Judge, for determination:

and at the same time and place, the said District Judge will be asked and requested to consider said objections to have been presented within the time provided for and allowed by Equity Rule 58.

Dated, December 30, 1919.

Theodore Martin

Solicitor for Complainant.

To Messrs. Cates & Robinson,

Solicitors for Defendants.

In the District Court of the United States for the Southern District of California Southern Division.

William H. Cochran, a citizen of the state of New York, complainant, vs. Big Sespe Oil Company, a corporation formed, organized and existing under and by virtue of the laws of the state of California, and a citizen and resident of the said state; and E. G. McMartin, sheriff of the county of Ventura, state of California, and also a citizen and resident of the said state of California, defendants.

In equity No. E-26.

Objections to Interrogatories.

OBJECTIONS OF COMPLAINANT to INTERROGATORIES ON BEHALF OF DEFENDANTS.

Complainant, William H. Cochran, makes these his objections to the several specified interrogatories addressed to him, on behalf of the defendants:

TO INTERROGATORY NO. 29:—On the ground that the facts, matters and things thereby sought to be discovered and disclosed, are not material to the defendants' defense of this suit, nor are they within the intent, purpose and purview of Equity Rule 58, under which the said interrogatories were allowed to be filed.

TO INTERROGATORY NO. 34:—On the ground that the correspondence thereby sought to be discovered and disclosed, is not material to the defendants' defense of this suit; nor is it within the intent, purpose and purview of Equity Rule 58, under which the said interrogatories were allowed to be filed.

Endorsed: Received copy of the within objections this 30th day of December, 1919 Cates & Robinson solicitors for defendants.

Filed Jan 5 1920 Chas. N. Williams, Clerk Ernest J. Morgan deputy

[TITLE AS BEFORE.]

Answers to Interrogatories.

ANSWERS OF COMPLAINANT

to

**INTERROGATORIES ON BEHALF OF
DEFENDANTS.**

Complainant, William H. Cochran, makes these his answers to the several specified interrogatories addressed to him, on behalf of the defendant, and sayeth as follows, to-wit:

TO INTERROGATORY NO. 1:—March 14, 1914, under the laws of the State of Delaware.

TO INTERROGATORY NO. 2:—The incorporators were F. R. Hansell, Geo. H. B. Martin and S. C. Seymour.

TO INTERROGATORY NO. 3:—I cannot say who were the officers at the organization of the Company. But I understand that practically immediately after such organization was completed, the following officers were elected:

President, C. C. Du Plaine; Vice President, Lawrence B. Fuller; Secretary and Treasurer, F. W. Tibbetts. I cannot recall who then constituted the Board of Directors other than these three officers and Charles H. Burr. Mr. Burr resides at 246 South Twenty-third Street, Philadelphia, Pennsylvania; and has his office at 328 Chestnut Street in that same city. I do not know either the residential, or business addresses of any of the others of these officers, but to the best of my knowledge both Mr. Du Plaine and Mr. Tibbetts reside and do business in the City of Philadelphia, State of Pennsylvania, and have done so for many years past.

TO INTERROGATORY NO. 4:—The Company's principal office, as provided for by its charter, was in the City of Wilmington, County of New Castle, State of Delaware. It also maintained an office for the transaction of its business at No. 328 Chestnut Street, Philadelphia, Pennsylvania. I do not know the room number of this later office.

TO INTERROGATORY NO. 5:—I cannot say as to its principal office. But as to the office for the transaction of its business, which is referred to in the answer to Interrogatory No. 4, this Company maintained its own office for several years at 328 Chestnut Street, Philadelphia; and it was occupied solely by its own officers and agents. I cannot say as to just when this later office was opened, other than it was shortly after the Company was organized. Nor can I say as to just when it was closed. It was, however, maintained for several years.

TO INTERROGATORY NO. 6:—I consider that this Interrogatory is covered by the answer to Interrogatory No. 5.

TO INTERROGATORY NO. 7:—I have no knowledge.

TO INTERROGATORY NO. 8:—Mr. Du Plaine held the office of President for several years, and then resigned, Mr. George V. Potter being elected to fill the vacancy. I do not know just when this change was made, or whether it was made before, or after January 2, 1917. I also believe that there was some change in the Board of Directors, but I have no definite recollection on the subject. Mr. Potter was not engaged in any business, but has resided in Philadelphia practically all his life. As to the residence and places of business of the other officers and directors, I would repeat what I said on that subject in my answer to Interrogatory No. 3.

TO INTERROGATORY NO. 9:—In answer to this Interrogatory, I would repeat the answer given to Interrogatory No. 4.

TO INTERROGATORY NO. 10:—In answer to this Interrogatory, I would repeat the answer given to Interrogatory No. 5.

TO INTERROGATORY NO. 11:—I consider that this Interrogatory is covered by the answer to Interrogatory No. 10.

TO INTERROGATORY NO. 12:—I have no knowledge.

TO INTERROGATORY NO. 13:—I never was the agent of the Company. I was the attorney-at-law in California, for the Company; but there was no particular written document of such retainer. There was no particular document authorizing me to represent the Company as its Trustee. But in my capacity of attorney for the Company I received several written communications directing and authorizing me to act as trustee for the Company in acquiring the title to the real property involved in this suit, and to take such title in my own name as Trustee for the Company.

TO INTERROGATORY NO. 14:—I consider that this Interrogatory is covered by the answer to Interrogatory No. 13.

TO INTERROGATORY NO. 15:—So far as I know, the Company had the same officers and Directors that I have already mentioned.

TO INTERROGATORY NO. 16:—In answer to

this Interrogatory, I would repeat the answer given to Interrogatory No. 4.

TO INTERROGATORY NO. 17:—In answer to this Interrogatory, I would repeat the answer given to Interrogatory No. 5.

TO INTERROGATORY NO. 18:—I consider that this Interrogatory is covered by the answer to Interrogatory No. 17.

TO INTERROGATORY NO. 19:—I have no knowledge.

TO INTERROGATORY NO. 20:—In answer to this Interrogatory, I would repeat the answer given to Interrogatory No. 13; and would also further say that there was no particular document of the character referred to, given to me during the period of time covered by this Interrogatory.

TO INTERROGATORY NO. 21:—I consider that this Interrogatory is covered by the answer to Interrogatory No. 20.

TO INTERROGATORY NO. 22:—So far as I know, the Company had the same officers and directors that I have already mentioned, excepting that Mr. Tibbetts resigned as Secretary and Treasurer, and C. C. DuPlaine was elected in his place as Secretary. I do not know the date of Mr. Tibbetts' resignation; nor do I know who was elected in his place as Treasurer. Mr. DuPlaine resides and is engaged in business in Philadelphia, Pennsylvania, or at least was up to June, 1919, when I last heard of him. I do not know his address, either of business or residence.

TO INTERROGATORY NO. 23:—I have no knowledge, but assume that they are in the possession of the Secretary, Mr. Du Plaine, in Philadelphia, Pennsylvania.

TO INTERROGATORY NO. 24:—I do.

TO INTERROGATORY NO. 25:—He resides at 246 So. Twenty-third Street, Philadelphia, Pennsylvania; and also maintains his office at 328 Chestnut Street, in that city.

TO INTERROGATORY NO. 26:—So far as I am advised, he was one of its directors and also its attorney and general counsel. I can not say as to other connections, if there were any, which he had with the Company.

TO INTERROGATORY NO. 27:—He has not.

TO INTERROGATORY NO. 28:—I am not.

TO INTERROGATORY NO. 30:—In answer to this Interrogatory, I would repeat the answer given to Interrogatory No. 13; and would also further say that there was no particular document of the character referred to, given to me during the period of time covered by this Interrogatory.

TO INTERROGATORY NO. 31:—I consider that this Interrogatory is covered by the answer to Interrogatory No. 30.

TO INTERROGATORY NO. 32:—A copy of the certain instrument in writing whereby the said Pacific Crude Oil Company assigned and conveyed unto the Complainant herein, the certain redemption and right of redemption of the real property involved in this suit,

and in the Bill of Complaint herein particularly described, is hereunto annexed.

TO INTERROGATORY NO. 33:—I consider that this interrogatory is covered by the answer to Interrogatory No. 32, and the copy of the instrument therein referred to.

TO INTERROGATORY NO. 35:—I have no knowledge of any.

United States of America,)
)
 State of California,) ss.
)
 County of Los Angeles.)

William H. Cochran, being duly sworn, deposes and says:

I am the Complainant in the above entitled suit. I have read the foregoing Answers to Defendants' Interrogatories and I know the contents thereof. The same are true to my own knowledge, excepting as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

WILLIAM H. COCHRAN.

Subscribed and sworn to before me this 30th day of
December, 1919.

(Seal)

LILLIAN VOLLMER,

Notary Public in and for the County of Los Angeles,
State of California.

WHEREAS, under and pursuant to the certain writ of execution issued to him out of the Superior Court of the County of Ventura, State of California, dated the

second day of February, 1917, and upon the certain judgment theretofore given, made and entered in the said Court, in favor of Big Sespe Oil Company, a corporation, and against Pacific Crude Oil Company, a corporation, the Sheriff of the aforementioned County of Ventura, State of California, did, on the third day of March, 1917, sell at public auction, all the certain estate, right, title and interest of the said judgment debtor, Pacific Crude Oil Company, a corporation, of, in, and to the certain real property hereinafter more particularly referred to, and described; and

WHEREAS, under and pursuant to the laws and statutes of the said State of California, in such cases made and provided for, the said judgment debtor, Pacific Crude Oil Company, ever since such aforementioned sale has had, and still has the legal and statutory right, and still is entitled to redeem the aforementioned real property from the aforesaid sale thereof under execution, and to make such redemption in the form and in the manner likewise required and provided for by the said laws and statutes of the said State of California;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Pacific Crude Oil Company, a corporation formed, organized and existing under and by virtue of the laws of the State of Delaware, and also being the certain hereinbefore mentioned judgment debtor, for, and in consideration of the sum of One Dollar, and certain other good and valuable consideration to it in hand paid and delivered by William

H. Cochran, of the City and State of New York, at and before the sealing and delivery of these presents, and the receipt and delivery whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, set over and conveyed, and by these presents does grant, bargain, sell, assign, transfer, set over and convey unto the said William H. Cochran, all and every the certain hereinbefore mentioned redemption, and right of redemption, which it, the said Pacific Crude Oil Company, ever had, now has, or hereafter may have to redeem the certain hereinbefore mentioned and hereinafter particularly described real property, from the certain aforementioned sale thereof, under execution, on March 3, 1917; and also all and every right, title, interest, benefit and advantage under and because of the said right of redemption; and also every power and authority in connection therewith, including any and all rights of action and proceedings to make and enforce such redemption. It being the intent and purpose of the said Pacific Crude Oil Company, by this instrument, to absolutely and fully assign and transfer unto the said William H. Cochran, not alone its aforementioned certain right of redemption, but also every right, power and authority, either at law, or in equity, in any way connected therewith so that the said William H. Cochran may as fully and completely make and enforce such redemption as this Company might, and could do, if this sale and assignment had not been made, and as if this Company was personally present. TO HAVE AND TO HOLD to the said William H. Coch-

ran, his executors, administrators, and assigns from henceforth, and to his own proper use, benefit and behoof forever.

The certain hereinbefore mentioned real property is situate, lying and being in the aforementioned County of Ventura, State of California, and is bounded and described as follows, to-wit:

The West half of lot No. 6 and lots numbered 7 and 9 of Section 1 in Township 4 North, range 20 west, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in lot 9, section 1 in Township 4 north, range 20 west, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the northwest corner of the Kentuck Oil claim as said claim is described in that patent executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898, and recorded in Book 2, page 336, of Patents, records of Ventura County; thence

1st. East Five (5) chains along the north line of said Kentuck Oil claim; thence

2nd. North at right angles Three (3) chains; thence

3rd. North Sixty (60°) degrees west 4 chains; thence

4th. South $56\frac{1}{2}^{\circ}$ west to a point 4 chains north of the center of said section 1, township 4 north, range 20 west, which point is also the northwest corner of the southeast quarter of said section 1; thence

5th. South 4 chains along the west line of said S. E. quarter of said section 1; thence

6th. East at right angles 5.95 chains to the west line of said Kentuck Oil claim; thence

7th. North along the west line of said Kentuck Oil claim to place of beginning, containing 9 acres more or less;

The New York Oil and Placer Mining claims, located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in Book 2, page 245 of Mines, Records of Ventura County, and included in the location of the "Nellie Belle" placer mining claim hereafter referred to.

Also all that part of the Henry Gage Placer mining claim not included in lot 7, section 1, township 4 north, range 20 west, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in Book 3, page 154 of Mines, records of Ventura County.

Also the Elwood Placer mining claim located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in Book 19, page 315 of Mines, Records of Ventura County.

Also the "Nellie Belle" placer mining claim located by T. M. Hornada, E. F. Coldwell and J. A. Clampitt, April 1, 1910, and recorded in Book 19, at page 315 of Mines, Records of Ventura County.

IN WITNESS WHEREOF, the said PACIFIC CRUDE OIL COMPANY, a corporation, has, on the Eleventh day of June, A. D. 1919, caused these pres-

deponent is the Secretary of the said corporation and that the name of deponent above signed in attestation of the due execution of the said instrument is in deponent's own proper handwriting.

(Sgd) C. C. DUPLAINE.

Sworn to and subscribed before me this 11th day of June, A. D. 1919.

GEORGE KOPPENHOEFER, JR.,

(Seal)

Notary Public.

328 Chestnut St., Phila., Pa.

My commission expires March 10, 1921.

Endorsed: Received copy of the within answer this 30th day of December, 1919. Cates & Robinson, solicitors for defendants.

Filed Dec. 31, 1919. Chas. N. Williams; by R. S. Zimmerman, deputy clerk

[TITLE AS BEFORE.]

Answer of Defendants to Bill of Complaint.

The joint and several answer of Big Sespe Oil Company, a corporation, and E. G. McMartin, sheriff of the county of Ventura, state of California, to the bill of complaint.

These defendants, reserving all manner of exceptions that may be had to the uncertainties and imperfections of the bill, come and answer thereto, or to so much thereof as they are advised is material to be answered, and say:

I.

Defendants have no knowledge or information sufficient to enable them to form a belief as to the truth of the allegation in paragraph "First" of complainant's bill, that complainant is now and always has been a citizen of the State of New York, and basing their denial upon that ground, deny that complainant is now or always, or at anytime has been, a citizen of the State of New York.

Otherwise than as herein set forth, defendants admit every allegation of paragraph "First" of said bill.

II.

Defendants admit the allegations in paragraph "Second" of said bill of complaint.

III.

Defendants admit the allegations in paragraph "Third" of said bill of complaint.

IV.

Defendants admit the allegations in paragraph "Fourth" of said bill of complaint.

V.

Defendants admit the allegations in paragraph "Fifth" of said bill of complaint.

VI.

Defendants admit the allegations in paragraph "Sixth" of *of* said bill of complaint.

VII.

Defendants admit the allegations in paragraph "Seventh" in said bill of complaint.

VIII.

Defendants admit the allegations in paragraph "Eighth" in said bill of complaint.

IX.

Defendants admit that since the entry of said defendant, Big Sespe Oil Company, upon the said real property described in complainant's bill, it has produced and extracted crude petroleum from the said real property, and has sold the same and from such sales has realized certain sums of money.

Defendants allege that said defendant, Big Sespe Oil Company, has continuously produced and extracted crude petroleum from the said real property, and has legally and continuously sold the same, except during a portion of such time when the pumping plant and works for the production and extraction of crude petroleum from the said real property were destroyed by fire, and that such interruption continued for a period of more than three months.

Defendants admit that said defendant, Big Sespe Oil Company, has received and collected from the sale of crude petroleum produced and extracted from the said real property, a sum of money amounting in the aggregate to about thirteen thousand dollars.

X.

Defendants deny that such or any moneys or profits as have, as alleged in complainant's bill or otherwise, been received or collected by the said defendant company, Big Sespe Oil Company, from the said real prop-

erty were or always or at all have been or still are under the laws of the State of California, or otherwise, a credit upon the redemption money, likewise or at all required to be paid by the said laws of said State of California to redeem the said real property from the sale thereof mentioned and described in complainant's bill.

XI.

Deny that before the expiration of the time allowed under the statutes of said State of California in such cases made or provided for the redemption of said real property from the sale thereof under execution, as alleged and set forth in complainant's bill, or at several or any times, or on several or any different days long or at any time prior to the expiration of the said time for such redemption, the said judgment debtor, Pacific Crude Oil Company, requested or also or at all demanded, either orally or in writing from the said judgment creditor or purchaser, Big Sespe Oil Company, a statement of such or any moneys or profits as the said purchaser, either as alleged in complainant's bill or otherwise, had received or collected from the said real property from or after the sale thereof under execution on March 3, 1917, as alleged in complainant's bill.

Deny that the said purchaser likewise or at all at said or any several or any different time or times, promised to make or deliver such or any statement to the said judgment debtor, but admit that the said purchaser, Big Sespe Oil Company, has always failed and neglected to

make or deliver any statement relative thereto, and deny that said defendant, Big Sespe Oil Company, ever at any time or at all, promised to make or deliver the or any statement showing the income received from or profits arising from the operation of said real property.

XII.

Deny that on March 1, 1918, or at any other time or at all, either before the expiration of the time allowed for the redemption of said real property as alleged in complainant's bill, under the Statutes of said State of California, or otherwise, the judgment debtor, Pacific Crude Oil Company, either under or pursuant to the provisions of Section 707 of the Code of Civil Procedure of said State of California, or under or pursuant to the provisions of any other law or Statute of said State of California, duly or at all demanded in writing or otherwise of the judgment creditor or purchaser, Big Sespe Oil Company, one of the defendants in this action, a written or verified statement of the amounts of such rents or profits received by it as alleged in complainant's bill, or otherwise, from the said real property. Deny that said written or any demand was duly or at all served on or delivered to the said judgment creditor and purchaser, Big Sespe Oil Company, on the first day of March, 1918, or at any other time or at all. Defendants admit that a copy of a certain paper writing annexed to complainant's bill and marked "Demand for statement of rents and profits" was delivered to it on March 1, 1918, but deny that under the laws of said State of California, said Pacific Crude Oil Company

was entitled to or could acquire any legal title to any real property within the State of California, and further, that under the said laws of said State of California, no person or persons could, in pursuance of law, transact any business in the said State of California, in behalf of said Pacific Crude Oil Company.

Defendants admit that a copy of said paper writing annexed to complainant's bill and marked "Demand for statement of rents and profits," was on the first day of March, 1918, delivered to the said defendant, E. G. McMartin, Sheriff of the County of Ventura, State of California, but deny that the same was delivered by the said judgment debtor, Pacific Crude Oil Company, or by anyone else authorized under the laws of the State of California, to transact any business in said State in behalf of said judgment debtor, Pacific Crude Oil Company.

Defendant admits that, together with the said copy of the said paper writing entitled "Demand for statement of rents and profits" delivered to the said defendant, E. G. McMartin, Sheriff of the County of Ventura, State of California, there was also delivered to him a paper writing purporting to be a notice of the service of said demand on the said judgment creditor and purchaser, Big Sespe Oil Company, as alleged in complainant's bill, and a paper writing purporting to notify and direct the attention of said Sheriff to the fact that under and pursuant to the provisions of Section 707 of the Code of Civil Procedure of said State of California, and by reason and because of such written demand, the

time for the redemption of the real property from the sale thereof under execution as alleged in complainant's bill, had been and thereby was extended as and for the time or period by the said Section 707 of the California Code of Civil Procedure, also provided and directed, and that said purported notice further contained language purporting to notify the said Sheriff that pending and until the expiration of such extended time or period for the redemption, as alleged in complainant's bill, of said real property, he, the said Sheriff, should not make or execute or deliver, excepting at his peril, any deed or conveyance thereof, to the said judgment creditor and purchaser, Big Sespe Oil Company, but defendants allege that on said date of March 1, 1918, as alleged in complainant's bill, the said Pacific Crude Oil Company, under the laws of the State of California, was not entitled to, nor could said Pacific Crude Oil Company, acquire any legal title to any real property within the said State of California, nor was anyone authorized or permitted in its behalf to transact or attempt to transact any business in said State of California.

XIII.

Admit that said defendant, Big Sespe Oil Company, judgment creditor and purchaser of said real property, for a period of one month from and after said date of March 1, 1918, and for a period of one month from and after the delivery to it of said paper writing, a copy of which is annexed to complainant's bill and marked "Demand for statement of rents and profits" failed and

refused, and still has failed and refused to give such or any demanded statement or any statement of the rents or profits received by it from the said real property, as alleged in complainant's bill, or otherwise.

XIV.

Allege that on or about the 29th day of August, 1918, the Sheriff of the County of Ventura, State of California, E. G. McMartin, one of the defendants herein, made, executed and delivered unto the aforesaid judgment creditor and purchaser, Big Sespe Oil Company, a corporation, a certain instrument in writing, without date, which said instrument in writing was executed and acknowledged by the said Sheriff on the said 29th day of August, 1918, wherein and whereby the said Sheriff did grant, bargain, sell, convey and confirm unto the aforementioned judgment creditor, Big Sespe Oil Company, a corporation, and one of the defendants in this action, all the estate, right, title and interest which the said judgment debtor, Pacific Crude Oil Company, a corporation, had on the 3rd day of February, 1917, or at any time afterwards, or on said date of August 29, 1918, had of, in and to the certain real property particularly described in complainant's bill. Said Sheriff's deed was thereafter and on the 3rd day of September, 1918, duly recorded in the office of the County Recorder of the County of Ventura, State of California, in Book 163 of Deeds, at page 340 and following.

Defendants deny that the said Sheriff by said deed of conveyance, purported or pretended or attempted to

grant or bargain or sell or convey or confirm unto the said judgment creditor and purchaser, Big Sespe Oil Company, one of the defendants herein, all the estate or right or title or interest which the said judgment debtor, Pacific Crude Oil Company, a corporation, had on the 3rd day of February, 1917, or at any time afterwards, or had on the said 29th day of August, 1918, of, in or to the certain real property, particularly described in complainant's bill.

XV.

Deny that on said 29th day of August, 1918, at which time the hereinabove described Sheriff's deed was made or executed and delivered to defendant, Big Sespe Oil Company, the said Pacific Crude Oil Company, under the laws of the said State of California, had any right of redemption in the said real property, or had any right to acquire or convey any legal title to any real property within the said State of California, and therefore, defendants deny that the time allowed by or under the Statutes of said State of California, in such cases made or provided for the redemption of said real property from the sale thereof under execution, as alleged in complainant's bill had not expired, and deny that by or because of the several or any matters or things in complainant's bill particularly or at all alleged or set forth, said time for redemption was on said 29th day of August, 1919, still open or running or had been extended for or until the expiration of the period or time particularly specified or provided for by the aforementioned Section 707 of the California Code of Civil

Procedure, and deny that said or any time for such or any redemption has not yet expired under the said Statutes of the State of California, and deny that the aforesaid judgment debtor, Pacific Crude Oil Company, or its assigns, if any there be, or anyone in its behalf, is still or at all lawfully entitled to make such or any redemption of the said real property.

XVI.

Deny that the said Sheriff's deed, particularly mentioned and described in complainant's bill, and herein, from the said Sheriff of the County of Ventura, State of California, was made or given without any due authority of law, or was not direct or absolute or was in any violation of or contrary to the or any provisions or directions of the Statutes of the said State of California in such cases made or provided for, either in so far or at all to in any way nullify or destroy or effect or modify or limit the legal or statutory or any right of the aforesaid judgment debtor, Pacific Crude Oil Company, or its assigns, if any there be, to redeem the real property particularly described in said Sheriff's deed, either as alleged in complainant's bill or otherwise.

Defendants allege that the said Sheriff's deed is in full force and effect, and did and does convey to the said defendant, Big Sespe Oil Company, the legal title to the real property described in complainant's bill, and the said real property is not subject to the said or any right of redemption by the said Pacific Crude Oil Company, either as alleged in complainant's bill, or otherwise.

XVII.

Defendants have no knowledge or information sufficient to enable them to form a belief as to the truth of the allegation in paragraph "Seventeenth" of complainant's bill, as to whether or not Pacific Crude Oil Company is the assignor of the complainant, and basing their denial upon that ground, deny that said Pacific Crude Oil Company is complainant's assignor.

Defendants deny that neither the Pacific Crude Oil Company nor complainant had an opportunity to present to the Honorable Superior Court of the County of Ventura, State of California, the several matters or facts in complainant's bill, particularly alleged and set forth.

Deny that as against the said Pacific Crude Oil Company, or as against complainant, the peremptory writ of mandate issued under date of August 29, 1918, out of the Superior Court of the County of Ventura, State of California, did not legally constitute, or was not, or is not now any legal warrant or authority for the making or executing or delivering of the said Sheriff's deed executed the said 29th day of August, 1918, and deny that at the time of the making or executing or delivering thereof, the said instrument was or ever since then has been or still is or at any time has been of no legal force or effect as against the said Pacific Crude Oil Company, or as against complainant.

Otherwise than as herein set forth, the defendants admit every allegation of paragraph "Seventeenth" of said bill of complaint.

XVIII.

Deny that said peremptory writ of mandate at the time of its issuance, as alleged in complainant's bill, was or ever since then has been, or still is, invalid or of no legal force or effect against either the said Pacific Crude Oil Company or as against this complainant, either as its pretended assignee or otherwise, either in that or because neither the said Pacific Crude Oil Company, nor this complainant was a party to the proceedings in which the said writ of mandate was issued.

Deny that said peremptory writ of mandate was or ever has been invalid or of no legal force, because of any of the matters or things alleged in complainant's bill, and deny that the defendant, Big Sespe Oil Company, in its petition for said writ of mandate, suppressed any matters or things which were then or there materially relevant to the question of the legal issuance of said writ of mandate, or that any of the averments in the said petition for writ of mandate were, as matters of fact or also at law, false or untrue or were designed or intended to mislead the Honorable Court to which the said petition was presented, or to wrongfully procure the issuance of said writ of mandate before the expiration of the time allowed for the redemption of said real property, either as alleged in complainant's bill, or otherwise.

Deny that the allegation in the said petition for writ of mandate mentioned and described in complainant's bill "that the period for redemption (of the hereinbefore mentioned real property from the said sale thereof

under execution) to-wit, one year from March 3, 1917, has expired," was then or always or at any time has been or still is false or untrue, and allege that the said period or time for such redemption had expired at the time of the making and filing of said petition for writ of mandate, and still remains and now is expired by reason of the fact that under the laws of the State of California, the said Pacific Crude Oil Company was not entitled to acquire any title to any real property within the State of California, nor was it entitled to, nor had it the right under the laws of the State of California on said date, nor is it now entitled to, nor has it the right under the laws of said State of California, nor has anyone in its behalf the right to transact or attempt to transact any business in said State.

Deny that the said allegation of said petition for writ of mandate was further or at all false or untrue, either as alleged in complainant's bill or otherwise, and defendants allege that the time for redemption was limited to one year from March 3, 1917, as in said petition for writ of mandate alleged, and deny that the said allegation of said petition for writ of mandate was further or at all false or untrue in that the period or time for such aforementioned redemption was not limited to or allowed by the Statutes of the State of California, relative thereto only to or within one year from March 3, 1917, as in said petition for writ of mandate alleged.

Deny that at the time the said petition for writ of mandate was verified or filed, as in complainant's bill alleged, the said petitioner well or at all knew, either as

a matter of fact or as a matter of law, that prior to the expiration of the specified or otherwise one year from March 3, 1917, it had been duly or at all served with the certain or any hereinbefore mentioned demand in writing, for a written and verified statement of the amounts of money or profits received by it from the said real property, but allege that at the time the said petition for writ of mandate was verified and filed, the said petitioner knew that there had been delivered to it a certain paper writing, a copy of which is annexed to complainant's bill of complaint marked "Demand for statement of rents and profits."

Defendants admit that defendant, Big Sespe Oil Company, had failed and refused to give such or any demanded statement, but deny that by reason or because of such failure or refusal, the time of one year ordinarily or at all allowed for such redemption mentioned in complainant's bill, or that the right to make any redemption was extended by or under the Statutes of said State of California, relative thereto or otherwise, either as alleged in complainant's bill or otherwise, and deny that such time has been extended, or that the period for redemption had not then expired.

Deny that the allegation in said petition for writ of mandate that the "said Pacific Crude Oil Company has no legal existence, and that it forfeited its charter to the State of California * * * on January 28, 1918," was then or there or at all false or untrue.

Deny that the general corporation laws of said State of Delaware provide for the continuance of the exist-

ence of a corporation organized under the said laws of the State of Delaware, for the purpose of redemption of the real property described in complainant's bill, or the bringing of any or all necessary or any actions or proceedings in connection therewith.

Defendants allege that under and pursuant to the laws of the State of California, said Pacific Crude Oil Company was not entitled to acquire title to any real property within the State of California, nor was the Pacific Crude Oil Company, nor anyone in its behalf, authorized or entitled to transact any business in this State.

Otherwise than as herein set forth, the defendants admit every allegation of paragraph "Eighteenth" of complainant's bill.

XIX.

Defendants deny that the allegations of said petition for writ of mandate particularly mentioned and referred to in paragraph "Eighteenth" of complainant's bill, were false or untrue, either as alleged in complainant's bill or otherwise, and deny that the said petitioner also or at all well or at all knew them to be false or untrue at the time of its making the same, or at any other time or at all.

Deny that said allegations in the said petition for writ of mandate were either false or untrue, or that there was any concealment or suppression of the true or complete or of any facts, or of the law, material or relevant to the said action, or that there was any concealment or suppression of the true or complete or of

any facts or of the law, as to the extension of the or any time allowed the said judgment debtor, Pacific Crude Oil Company, within which to make the redemption, as alleged in complainant's bill, of said real property, or that there was any concealment or suppression of the true or complete or of any facts, or of the law, as to the legal continuance of said Pacific Crude Oil Company after the said forfeiture of its charter, as in complainant's bill particularly alleged and set forth, or that there were any false or untrue allegations in said petition for writ of mandate, or any concealment or suppression of the true or complete or of any facts or of the law, made or done by the said petitioner with the purpose or intent of misleading or deceiving the Superior Court of said County of Ventura, State of California, to which the said petition for writ of mandate was presented, or made or done by the said petitioner for any purpose whatsoever.

XX.

Deny that there were any false or untrue allegations in said petition for writ of mandate, either as alleged in complainant's bill or otherwise, or that there was any concealment or suppression of the true or complete or of any facts or of the law, either as alleged in complainant's bill or otherwise, or that by reason of any false or untrue allegations of said petition for writ of mandate, or by reason of any concealment or suppression of the true or complete or of any facts or of the law, the petitioner, defendant herein, Big Sespe Oil

Company, intended to or actually did deceive or mislead the Superior Court of the County of Ventura, State of California, or induced or caused the said Court, by reason of any false or untrue allegation contained in the said petition for writ of mandate, or by reason of any concealment or suppression of the true or complete or of any facts or concealment or suppression of the law, induced or caused the said Superior Court to grant or issue the peremptory writ of mandate mentioned and described herein and in complainant's bill of complaint, and deny that the said peremptory writ of mandate would not have been granted or issued if the true or full facts or the law relative thereto, had been truthfully or fairly or properly presented by the said petitioner, Big Sespe Oil Company, but, on the contrary, allege that the full facts and the law were truthfully and fairly and properly presented by the said petitioner to the said Superior Court upon the hearing of said petition for writ of mandate.

XXI.

Deny that by reason of the several or any matters or things in complainant's bill specified or particularly or otherwise alleged or set forth, the said peremptory writ of mandate, or all or any proceedings or things had or done thereunder, either including the said written instrument from the said Sheriff of Ventura County, State of California, executed the 29th day of August, 1918, or including any other instrument or document, were or are of no force or effect to prejudice or alter

the alleged or any rights of the said Pacific Crude Oil Company or of this complainant acting as its alleged assignee or otherwise, either as particularly set forth or alleged in complainant's bill of complaint or otherwise.

XXII.

Defendants have no knowledge or information sufficient to enable them to form a belief as to the truth of the allegations contained in paragraph "Twenty-second" of the complainant's bill, and basing their denial upon that ground, deny that heretofore on the 11th day of June, 1919, or at any other time or at all, either by a certain or any instrument in writing bearing date of that or any day or otherwise, the aforesaid judgment debtor, Pacific Crude Oil Company, duly or at all sold or assigned or conveyed unto the complainant herein, William H. Cochran, any or all of the certain or any described redemption or right of redemption, either as alleged in complainant's bill or otherwise, and deny that the said judgment debtor at any time or at all, had or then had on said 11th day of June, 1919, or at any time, or might or could thereafter have any right of redemption of, in or to the aforesaid real property from the sale thereof under execution, either as particularly alleged and set forth in complainant's bill of complaint or otherwise, and deny that since the said 11th day of June, 1919, or since any other date, complainant ever has been or still is lawfully or at all entitled to make such alleged or any redemption of said real property.

XXIII.

Defendants have no knowledge or information sufficient to enable them to form a belief as to the truth of the allegation contained in paragraph "Twenty-third" of complainant's bill of complaint, as to whether or not complainant desires or intends to make a redemption of said real property from the sale thereof under execution, and basing their denial upon that ground, deny that complainant desires or intends to make such or any redemption, whether as alleged in complainant's bill or otherwise, of said real property from the sale thereof under execution.

Defendants admit that complainant is unable to determine the amount to be paid upon a redemption of said real property from the sale thereof under execution, but deny that any amount is necessary or required by law to make the same, for the reasons hereinabove alleged that neither said Pacific Crude Oil Company, nor this complainant is entitled by law to acquire any legal title to any real property within the State of California, nor is said Pacific Crude Oil Company nor this complainant in its behalf, either by virtue of an alleged assignment or otherwise, entitled to transact any business in said State.

Defendants deny that any statement of the rents or profits of said real property have ever been legally or at all demanded from said defendant, Big Sespe Oil Company, and deny that said or any profits under the Statutes of the State of California, relative thereto, are a credit upon the redemption money likewise or at all

required by the said Statutes to be paid on such or any redemption.

XXIV.

Defendants deny that material or irreparable or any loss or damage will be sustained or suffered by complainant, unless or without he be permitted to redeem the said real property from the sale thereof under execution as fully alleged and set forth in complainant's bill, or otherwise, or that material or irreparable or any loss or damage will be sustained or suffered by complainant in the event the written instrument from the said Sheriff of Ventura County, State of California, to Big Sespe Oil Company, one of the defendants herein, be not declared inoperative or null or void or be cancelled or discharged of record, or the said Big Sespe Oil Company be required or compelled by mandatory injunction or otherwise, to execute or deliver unto complainant the proper or any deed for the said real property, whether upon the receipt of such or any moneys, if any, as this Honorable Court may find due or legally payable on such or any redemption, or otherwise.

XXV.

Defendants deny that complainant can have no adequate or complete relief at law.

XVI.

Defendants allege that complainant from and after the 30th day of March, 1917, was the holder of the legal title to the real property described in complainant's bill as trustee for the said Pacific Crude Oil Company, and that during a greater portion of said time,

complainant was in possession of the said real property and operating the oil wells thereon and producing crude petroleum therefrom and selling the same. That neither did the said Pacific Crude Oil Company nor this complainant, do the annual assessment work upon the placer mining claims described in complainant's bill for the calendar year 1914, nor pay the State and County taxes levied and assessed against said real property and placer mining claims, either for the years 1914-15 nor 1915-16.

That on the 22nd day of August, 1914, this defendant, Big Sespe Oil Company, commenced an action against this complainant as trustee for Pacific Crude Oil Company, and Pacific Crude Oil Company, to foreclose its vendor's lien upon the real property described in plaintiff's complaint. That from the time of the commencement of said action to and including the 29th day of August, 1918, which was and is the date of the execution by the said defendant, E. G. McMartin, Sheriff of the County of Ventura, State of California, to defendant, Big Sespe Oil Company, of his Sheriff's deed of, in and to the real property described in complainant's bill, this complainant was fully and at all times informed of every action and proceeding relating to or in any wise affecting the title to the said real property.

That Section 707 of the Code of Civil Procedure of the State of California, is as follows:

“RENTS AND PROFITS. The purchaser from the time of the sale until a redemption, and a

redemptioner, from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption-money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor."

That the said Pacific Crude Oil Company and this complainant, were and have been guilty of laches and unreasonable delay in bringing this action, in that they

failed to bring an action in any court of competent jurisdiction against defendant, Big Sespe Oil Company, to compel an accounting and disclosure of the rents and profits of said real property, if any there be, accruing from the time of the date of the sale of said real property under execution as aforesaid, on the 3rd day of March, 1917, to the 11th day of June, 1919, at which time complainant has alleged that said Pacific Crude Oil Company assigned to him all the right and interest, if any it had, to redeem the said real property from execution sale.

That neither Pacific Crude Oil Company nor this complainant, were without knowledge of all and every proceeding taken and had affecting the title to said real property, but on the contrary that Pacific Crude Oil Company and this complainant had at all times full and complete knowledge of all proceedings in any wise affecting the title to said real property, and under the provisions of Section 707 of the Code of Civil Procedure of said State of California, the said Pacific Crude Oil Company, or its trustee or trustees or receiver or receivers, during nearly five (5) months, might have commenced a suit in a court of competent jurisdiction against this defendant, Big Sespe Oil Company, for an accounting of the rents and profits, if any, arising from the operation of said real property between the date of the sale thereof under execution, to-wit, March 3, 1917, and one (1) year thereafter.

Defendants are informed and believe, and upon such information and belief allege, that the paper annexed

to complainant's bill and entitled "Demand for statement of rents and profits" was and is of no effect and void, for the reason that it was not signed or executed by the Pacific Crude Oil Company by authority of its board of directors, or by authority of its trustees or attested by the signature of a duly authorized officer of said corporation, or by its trustee or trustees or receiver or receivers, and for the further reason, as plaintiff is informed and believes, and therefore alleges, that this complainant, William H. Cochran, was never at any time duly or at all authorized to make such or any demand in behalf of said Pacific Crude Oil Company, and defendants are informed and believe, and therefore allege, that said complainant, William H. Cochran, was not prior to or on said date of March 1, 1918, and is not now an attorney-at-law duly or at all admitted to practice in any of the courts of the State of California.

Defendants are informed and believe and therefore allege, that the said Pacific Crude Oil Company has never complied with the laws of the State of California, relating to foreign corporations, in that it has never filed in the office of the Secretary of State of the State of California, a certified copy of its articles of incorporation, or of its charter, or of the Statute or Statutes or Legislative or Executive or Government Act or Acts creating it, duly certified by the Secretary of State or other officer authorized by law, of the jurisdiction under which said Pacific Crude Oil Company is formed, to certify such copy, and defendants are in-

formed and believe, and upon such information and belief allege that this complainant, prior to or on said first day of March, 1918, never was duly or at all authorized to transact or attempt to transact any business in said State in behalf of said Pacific Crude Oil Company.

That on the said 11th day of June, 1919, on which date complainant alleges that said Pacific Crude Oil Company sold, assigned and conveyed unto the complainant any and all of its right of redemption, said Pacific Crude Oil Company possessed nothing having a legal existence or value and possessed no right of redemption of the real property described in complainant's bill and could not lawfully or at all assign to complainant any right which it might have to commence or prosecute this action.

Having thus made full answer to all the matters and things contained in the bill, these defendants pray that this suit may be dismissed, and that they may be hence discharged with their reasonable costs.

ALTON M. CATES,
DUDLEY W. ROBINSON,
SOLICITORS FOR DEFENDANTS.

Endorsed: Received copy of the within answer this 23rd day of October 1919. Theodore Martin, attorneys for complainant.

Filed Oct 23 1919. Chas N. Williams, clerk; by R. S. Zimmerman, Deputy Clerk.

[TITLE AS BEFORE.]

**Statement of the Evidence Under Equity Rule No.
75, and Stipulation as to Statement of Evidence.**

LOS ANGELES, CALIFORNIA, TUESDAY,

APRIL 6, 1920. 10:00 A. M.

THE COURT: Cochran vs. Big Sespe Oil Company.

MR. MARTIN: Ready.

MR. ROBINSON: Ready for the defendant.

MR. COCHRANE: I offer in evidence the judgment filed and entered January 2, 1917, in the Superior Court of California, Ventura County, in the action of the Big Sespe Oil Company vs. William H. Cochran as Trustee for the Pacific Crude Oil Company, a corporation, and Pacific Crude Oil Company, a corporation. This is the judgment and the action which is the basis of this whole suit, and inasmuch as it is very much fuller than it is alleged in the complaint, I would like to have the record more complete, and for that reason I offer it.

THE COURT: Let it be filed as an exhibition in this case.

(Document filed as Plaintiff's Exhibit 1.)

MR. ROBINSON: We object to the document, the judgment, on the ground that it is incompetent, irrelevant and immaterial and that it is incomplete.

THE COURT: Now you haven't the judgment roll here?

MR. COCHRAN: No, sir. Then I will withdraw the offer and will offer in evidence a transcript of the

judgment docketed in the judgment book on January 2, 1917.

MR. ROBINSON: We object to the introduction of the document now offered on the ground that no proper foundation has been laid for it and it is incompetent, irrelevant and immaterial and not shown to be within the issues of this case.

THE COURT: Do I understand there is an allegation in the bill that there was a judgment obtained, and a sale under execution by virtue of that judgment, and that that is admitted in the answer?

MR. COCHRAN: Yes, sir.

THE COURT: Let them be filed as exhibits in the case.

(Documents above mentioned filed as Plaintiff's Exhibit.)

(The document last referred to was filed as Plaintiff's Exhibit 2.)

MR. COCHRAN: I also offer in evidence the certified copy of the execution which was issued on this judgment of the Superior Court of Ventura County to the Sheriff; and in connection with this execution, which I say was issued on the 3rd of February, 1917, on this judgment, I also offer in evidence the Sheriff's return which is attached to the execution and also certified.

(Documents last above referred to filed as Plaintiff's Exhibit No. 3.)

MR. COCHRAN: I offer in evidence the certified

copy of the Sheriff's certificate of sale of the property involved in this suit under this judgment and execution already in evidence.

(Document last referred to filed as Plaintiff's Exhibit No. 4.)

I offer in evidence deeds dated March 30, 1914, one being a bargain and sale deed covering the patented portion of the lands involved in this suit, and the other being the ordinary quit-claim of the placer mining claim locations. The first deed, which covers the patented portion of the land, as I say, is dated March 30, 1914, and is recorded April 1, 1914, in Book 142 of Deeds, page 239, of the Records of Ventura County.

MR. ROBINSON: To the first document offered, dated March 30, 1914, we object upon the ground that there is no proper foundation laid; that it is incompetent, irrelevant and immaterial.

THE COURT: Well, if the Court must pay any attention to that objection, it is very general. You will have to prove the execution of this deed, Mr Cochran.

MR. COCHRAN: Do you raise any question about the execution of that deed? If you do I will call one of your officers.

MR. ROBINSON: No.

THE COURT: Then the objection will be overruled. Now it is my practice to call attention to things as we go along, so that the parties may understand what is in the mind of the Court. This is a deed to William H. Cochran, trustee for the Pacific Crude Oil Company, a corporation organized, etc. I have hastily read it,

and there is not, as I see, any further recitation concerning the Pacific Crude Oil Company. Am I right about that?

MR. COCHRAN: Yes, sir; nothing further at all.

THE COURT: Then it is the impression the Court has that the phrase "Trustee for the Pacific Crude Oil Company" is simply *descriptio persona* and the Pacific Crude Oil Company gets nothing by virtue of this deed.

MR. COCHRAN: Yes, sir; that is exactly what I claim.

THE COURT: Well, that is the impression I have, that it gets nothing by virtue of that deed.

MR. ROBINSON: Your Honor overrules the objection?

THE COURT: Yes.

MR. ROBINSON: Will Your Honor grant an exception.

THE COURT: All right.

(Document last above referred to filed as Plaintiff's Exhibit No. 5.)

MR. COCHRAN: We offer the other instrument of the same date covering the placer mining locations.

MR. ROBINSON: Same objection.

THE COURT: Do you claim that it has not been properly executed?

MR. ROBINSON: No; on the ground that there is no proper foundation laid; that it is incompetent, irrelevant and immaterial and not within the issues of the case.

THE COURT: Well, if you don't raise the question that it was not properly executed, the objection will be overruled.

MR. ROBINSON: No, we don't raise that question. Exception.

(Document last above offered filed as Plaintiff's Exhibit No. 6.)

MR. COCHRAN: Now, as I have said, the Pacific Crude Oil Company, on March 1, 1917, served the written demand under Sec. 707 of the Code of Civil Procedure for a statement of these properties, the property involved in this suit. Will counsel produce the notice that was served on them, or will they consent that this is a copy, which I will have marked for identification (handing paper to counsel)?

MR. ROBINSON: We will consent that it be marked for identification.

MR. COCHRAN: Well, do you agree that this is a copy?

THE COURT: Is the copy set out in the complaint admitted?

MR. ROBINSON: Yes.

THE COURT: Well, I don't think it is necessary to prove it then.

MR. COCHRAN: Can I have this marked for identification, that is, the written demand of March 1?

MR. ROBINSON: The substance of our concession is that if it is the same as that set out in the complaint it is a copy; that is all we know about it.

MR. COCHRAN: Oh, yes.

THE COURT: All right.

(Document last above referred to filed as Plaintiff's Exhibit No. 7.)

MR. COCHRAN: And, may it please the Court, the defendants concede that each of them received a copy of this written demand, copy of which is attached to the bill, on March 1, 1917, and that is conceded by the answer.

MR. ROBINSON: We will make the same concession if it is in the answer. I don't recall the date.

MR. COCHRAN: There was a copy of this also served on the Sheriff. There was on the Big Sespe Oil Company. The answer admits that they each received a copy. And I also assume it is conceded that the Big Sespe Oil Company never gave any statement pursuant to this demand.

MR. ROBINSON: Yes, we have admitted that in the pleadings.

MR. COCHRAN: Now, if your Honor please, I offer in evidence the assignment dated June 11, 1919, from Pacific Crude Oil Company to William H. Cochran of this right of redemption.

MR. ROBINSON: We object to the document as incompetent, irrelevant and immaterial; that there is no proper foundation laid, in this, that the official capacity of the person who purports to have executed it is not shown, their connection with the Pacific Crude Oil Company is not shown, and the due execution thereof is not shown by any evidence other than that which is contained in the document itself.

(Testimony of William H. Cochran.)

THE COURT: Well, it cannot be admitted in evidence until it is proved.

WILLIAM H. COCHRAN,

plaintiff herein, having been first duly sworn as a witness, testified as follows:

DIRECT EXAMINATION BY MR. MARTIN:

I am William H. Cochran, the plaintiff in this action. To fully explain my relationship with the Pacific Crude Oil Company, I have to go back to February, 1914. I was coming to California, particularly Los Angeles, in February, 1914 (Interrupted.) I was acquainted with the officers of the Pacific Crude Oil Company who were officers at the time of this assignment. I don't know who they may be now. I have no reason for knowing they have changed. I know who they were at the time of the execution of this instrument last offered in evidence, this assignment to me. At that time George Van Hook Potter was president, and I think it is C. Duplaine was secretary.

EXAMINATION BY THE COURT:

There was nobody else acting as secretary or president at that time, of this corporation, or pretending or claiming to be. I am familiar with the seal of the corporation; I have actually seen impressions of it early in 1914; and then later on I repeatedly saw the actual seal.

(Testimony of William H. Cochran.)

EXAMINATION BY MR. MARTIN:

Q. What, if any, knowledge have you as to the execution of that instrument, this assignment to you of the right of redemption by the Pacific Crude Oil Company, by the officers of that company?

MR. ROBINSON: That is objected to as assuming a fact not in evidence and calling for a conclusion of the witness, and on the ground that no proper foundation has been laid to show who the officers of the corporation were.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 43.)

I saw both Mr. Potter and Mr. Duplaine sign and execute that instrument, and I saw the seal attached to it, and I also heard it acknowledged, and it was then delivered to me.

EXAMINATION BY THE COURT:

Q. That is an impression of the seal of the corporation attached to this instrument, is it?

A. Yes, sir; it is.

MR. ROBINSON: Will Your Honor grant us an objection and exception to the question as to the authenticity of the seal?

THE COURT: Certainly; the objection will be overruled.

MR. ROBINSON: Exception. (P. 43.)

EXAMINATION BY MR. MARTIN:

Q. What, if any, knowledge have you as to the

(Testimony of William H. Cochran.)

authority, if any, that these officers had to execute that instrument?

MR. ROBINSON: That is objected to as calling for a conclusion of the witness and not the best evidence.

THE COURT: The objection is sustained. It seems to me like the records of the company are the best evidence of that.

MR. MARTIN: We will take an exception to the ruling of the court. (P. 44.)

EXAMINATION BY MR. MARTIN:

I was in Philadelphia, Pennsylvania, at the time I saw these officers of the Pacific Crude Oil Company execute this instrument on the day that the instrument bears date, which I have forgotten now.

EXAMINATION BY THE COURT:

It was June 11, 1919.

EXAMINATION BY MR. MARTIN:

I paid something to the Pacific Crude Oil Company, as consideration for the assignment to myself.

Q. To whom did you pay it, or what did you pay?

A. What I paid was by agreement, I guess a general release to the Pacific Crude Oil Company as such, and also to each and every of its stockholders, of all my claims for services and disbursements covering a period of five years which were unpaid to me, in consideration of their making their assignment of this right of redemption to me.

(Testimony of William H. Cochran.)

MR. ROBINSON: I move to strike out the answer as containing a conclusion of the witness, not responsive and not the best evidence, evidence concerning the contents of a written document.

THE COURT: Was this in writing you released to them?

A. I gave a formal general release in writing both to the company and the stockholders.

THE COURT: That is the best evidence, and the answer will be stricken out. * * * The written document is the best evidence of what he gave them.

Q. What, if anything, did you do in the way of services or anything like that for the Pacific Crude Oil Company as a consideration?

MR. ROBINSON: That is objected to as calling for a conclusion of the witness and assuming a fact not in evidence.

THE COURT: The objection is overruled.

A. I represented the Pacific Crude Oil Company as attorney for over five years. I even commenced before they were actually incorporated, down to the time I took this assignment from them.

MR. ROBINSON: May we have an exception as to the last ruling, Your Honor?

THE COURT: Yes. (P. 49.)

Q. What did these services consist of? What did you do?

(Testimony of William H. Cochran.)

A. I was retained generally to come to California and take charge of any interests which the Pacific Crude Oil Company might determine to look into or go into in this state, and particularly to acquire the title to this property, which was commonly known as the Clampitt property, and I did that, and represented them, as I say, in various matters, and tried to work out their affairs here for five years.

MR. ROBINSON: I move to strike out that portion of the answer that contains the statement that he was retained for the purposes therein stated, as not responsive to the question, a conclusion of the witness, not the best evidence, and incompetent, irrelevant and immaterial.

THE COURT: The motion is denied.

MR. ROBINSON: Exception. (P. 50.)

There was not any agreement or understanding between me and the company as to the value of these services. There was a discussion about it as to the amount which was going to me, just before this assignment and general release were executed. I claimed at least \$25,000 and they thought that \$15,000 would be enough. I told them that was because they didn't know what I had done, but they insisted upon \$15,000 going into the general release, and it were in, at least I didn't get any payment for that \$15,000 or \$25,000 other than this assignment.

Q. Did you accept this right of redemption by the

(Testimony of William H. Cochran.)

Pacific Crude Oil Company to you as payment for the services you had rendered?

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 51.)

A. I did, sir. I didn't get any compensation other than that at that time.

Q. Did you at any time between the third day of March, 1917, and the third day of March, 1918, make any demand upon the Big Sespe Oil Company, the defendant in this action, to give you a statement as required under section 707 of the Civil Code of California as to the rents and profits as set up in the pleadings on behalf of the plaintiff?

MR. ROBINSON: That is objected to as incompetent, irrelevant and immaterial and not within the issues of this case, as to whether he made a demand himself, and if there was any other demand than the one admitted in the pleadings, then of course it is not within the statute and is incompetent, irrelevant and immaterial.

THE COURT: The objection is sustained.

MR. MARTIN: We save an exception, if Your Honor please. I will repeat the question.

Q. Did you make any written demand on the Big Sespe Oil Company prior to March 1, 1918, for a statement of the rents and profits derived from the property that was being operated by the Big Sespe

(Testimony of William H. Cochran.)

Oil Company, and being the property described in the bill of complaint?

MR. ROBINSON: Objected to as irrelevant and immaterial.

THE COURT: Well, it is not relevant.

MR. MARTIN: Exception. (P. 54.)

EXAMINATION BY MR. MARTIN:

Q. Did the Big Sespe Oil Company ever comply with the demand made on them?

MR. ROBINSON: That is objected to as calling for a conclusion of the witness, and as immaterial, because there is an admission.

THE COURT: Admitted in the answer? The objection is sustained.

MR. MARTIN: Exception. (P. 55.)

MR. ROBINSON: No cross-examination.

|(Noon recess.)

WILLIAM H. COCHRAN, recalled.

DIRECT EXAMINATION RESUMED BY MR. MARTIN:

During the times covered by the bill of complaint in this action I was a member of the bar of the State of New York.

Q. Had you, prior to March 1, 1917, any conversation or conversations with the officers or directors or stockholders of the Pacific Crude Oil Company as to their business affairs?

MR. ROBINSON: That is objected to as calling

(Testimony of William H. Cochran.)

for a conclusion of the witness as to whether they were officers or directors.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 58.)

A. I did; yes, sir.

EXAMINATION BY MR. MARTIN:

I had a conversation or communication with some of them relative to the business and affairs of the Pacific Crude Oil Company with reference to their property in Ventura county, California. I had a personal conversation with all of the officers and all of the directors and also the stockholders at a stockholders' meeting about this particular suit, and what I was to do in connection with it and in connection with the protection of the property which was involved in this suit so that it would not be lost to me. This suit in Ventura was commenced by service by publication. I was in Philadelphia or in the East at the time, and it was served on me by publication. My recollection is that it was commenced about July or August, 1914, and I actually received the summons and complaint by mail, my recollection is, in the early part of December, 1914, and I immediately took it up with all the officers and directors and also attended a meeting of the stockholders, at their annual meeting in the early part of January, 1915, and then received my instructions from them as to what to do to protect them.

(Testimony of William H. Cochran.)

Q. Who were the officers of this Pacific Crude Oil Company at the time the suit was commenced in 1914, as you have stated?

THE COURT: The Ventura suit?

MR. MARTIN: Yes, sir.

MR. ROBINSON: That is objected to as not the best evidence, and as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 61.)

A. At that time C. C. Duplaine was president, and a gentleman by the name of Tibbets was secretary and treasurer, and the general counsel for the company was Charles H. Burr, and those officers were directors of the company, and my best recollection and I am very positive about it, is that the other directors at that time were a Mr. Jackson and a Mr. Taylor. The people whom I have mentioned were acting as the officers of this corporation, the Pacific Crude Oil Company, on March 1, 1917.

EXAMINATION BY MR. MARTIN:

Q. Who were acting as the officers of this company, the said company, on March 1, 1918?

MR. ROBINSON: That is objected to as calling for a conclusion of the witness.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 62.)

A. I stated this morning who they were. I stated this morning that the president was Mr. George Van

(Testimony of William H. Cochran.)

Hook Potter and the secretary C. C. Duplaine, the two gentlemen who executed this assignment on the 11th of June.

EXAMINATION BY MR. MARTIN:

The main office of the company under the charter was in Wilmington, Delaware, the company being incorporated under the laws of Delaware. They had an office, however, at 328 Chester street, Philadelphia, which they maintained in their own name.

EXAMINATION BY THE COURT:

They had the seal of the corporation there. These men I speak of had charge of the seal at that time. I saw them have charge of it. There never were any other persons claiming to be officers of the corporation excepting these people I mention, and I talked with them continuously since they were organized in 1914. The books of the corporation were never in California.

EXAMINATION BY MR. MARTIN:

Q. What, if any, instructions did you ever receive from these officers relative to the redemption of this property or making a demand upon the Big Sespe Oil Company, the defendant herein, for a statement of the rents and profits collected?

MR. ROBINSON: That is objected to as indefinite and no time fixed. If it is a written instruction, or given at a specified time, and meeting, the question should indicate it so that proper objection can be

(Testimony of William H. Cochran.)

made, or our attention directed to what it sought to be elicited.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 64.)

EXAMINATION BY MR. MARTIN:

I was coming to California first in February, 1914, in connection with some business, and at that time those who subsequently became the officers and directors and stockholders of the Pacific Crude Oil Company were about organizing the company, but the organization had not been completed before I left. However, they retained me as attorney to take up the matter particularly of the purchase of this Big Sespe property, as it was commonly called, and they gave me general instructions as to what they wanted to accomplish, and that was to buy the property and take care of it; and I came out here on other matters, as I say, and then immediately took up that matter, and on March 30, with the money they furnished me, I acquired the title represented by the two deeds which went into evidence this morning. Subsequently I went home again, at the end of July, 1914, and then when I was served with the summons and complaint in the Ventura action I immediately took, as I say, the matter up with the officers and directors, and also at the annual meeting of the stockholders in January, 1915, and I was then asked if I would return to California and fight this matter through; and while I opposed first, they said they wanted me to come back,

(Testimony of William H. Cochran.)

and that I should return here and do whatever I thought was best not only in legal proceedings but otherwise so that the property would not be lost to them. Otherwise I had no detailed instructions as to how I was to carry it out, and I was to use my best judgment as to the ways and means of protecting that property against loss because of this suit, and I kept them informed from time to time by correspondence and letters, and when I returned East I again conferred with the various officers and directors and stockholders personally, and they knew fully what I had done and approved of it in conversation, and simply said they didn't have the money at the time, that they didn't have any money in the treasury, and then it was I made this proposition to buy the right of redemption for myself in view of my claims against them.

MR. ROBINSON: I move to strike out the answer of the witness as not responsive to the question, and that portion of it as to the conversations and approval of the officers and stockholders, as being a conclusion of the witness and not the best evidence of the acts and approval of the corporation, and as incompetent, irrelevant and immaterial.

THE WITNESS: If Your Honor will permit me, I did not intend to imply, sir, at all, the approval, but I had the absolute direct approval from every one of the officers and directors and every one of the stockholders with whom I talked. They approved

(Testimony of William H. Cochran.)

absolutely and in express language what I had done, and that was to the end, after I had made this demand and taken the steps I had taken, to protect the property from loss.

MR. ROBINSON: I ask that the motion, without being restated, be considered as going to all the statements of the witness and to all the subjects objected to.

THE COURT: The motion is denied.

MR. ROBINSON: Exception. (P. 67.)

(The purported original assignment of June 11, 1919, of the Pacific Crude Oil Company to W. H. Cochran was again offered in evidence.)

MR. ROBINSON: We object to it on the ground that it is incompetent, irrelevant and immaterial; no proper foundation has been laid; on the ground, particularly, that the character of the officers and their authority to execute it and the execution there by and on behalf of the corporation has not been shown; that the seal thereon has not been shown to be the seal of the corporation.

The affidavit of the secretary made before a notary, and then it certifies that he was a notary duly authorized.

THE COURT: The affidavit is of no consequence at all. If you will separate your objection as to that I will sustain your objection.

MR. ROBINSON: Yes, that is a separate objection as to the authenticity of the document by certificate.

(Testimony of William H. Cochran.)

THE COURT: The objection is sustained

MR. COCHRAN: Exception. (P. 71.)

THE COURT: I do not think the question whether it was properly acknowledged or not is properly before the court. I will overrule the objection to this deed.

MR. ROBINSON: It has to have the force and effect of a conveyance; and, furthermore, it is necessary for it to be authenticated in a certain way so as to be *prima facie* proof of the correctness of its contents. We would like to add, under the statute counsel has read, the objection that it is not properly authenticated.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception. (P. 79.)

(Document last above offered filed as Plaintiff's Exhibit No. 8.)

CROSS-EXAMINATION BY MR. ROBINSON:

I first came to California about February 28 or 29, 1914. I left here about the latter part of July and then went east, to New York, Philadelphia, the mountains of Virginia, Atlantic City, and numerous places.

Q. How long were you there at that time?

A. Where, at home?

Q. Yes, on that trip. (Witness continues.) I didn't return here until along about the early summer of 1915, in May or June; I have forgotten the exact month.

Q. During that visit East, did you see any of the

(Testimony of William H. Cochran.)

books or any books or records purporting to be the books or records of this corporation?

A. During the time I was home at that time, you say?

Q. Yes.

A. I know I did. I saw them. I saw the stock certificate book and the minute book. I don't know whether I saw any others. I couldn't tell offhand. On my return in the summer of 1915 I stayed until the early part of January, 1918, I guess. I remember receiving interrogatories in this case. Regarding Interrogatory No. 7, as follows: "Where were the books of said Pacific Crude Oil Company between March 13, 1914, and March 30, 1914, including the minute book, stock certificate book, stock ledger, stock journal, books of account and records of correspondence?" I answered: "I have no knowledge." That is quite correct, and I haven't changed that all in my testimony. Those interrogatories were directed to dates between March 13, 1914, and March 30, 1914, and I didn't return east until July, 1914, so I had no knowledge as to where they were on the dates to which that interrogatory is directed.

Regarding Interrogatory No. 12, as follows: "Where were the books of said Pacific Crude Oil Company between March 30, 1914, and January 2, 1917, including the minute book, stock book, stock ledger, stock journal, books of account and records of correspondence?" as to which I answered, "I have no knowledge,"

(Testimony of William H. Cochran.)

I repeat that. As to that time. If you had asked me whether I had ever seen them during that time. You haven't asked me that now, and I think you should be as fair to me as I am to you. You asked me if I saw any books, and I say I did, but as to whose custody they were in, or who kept them, I have no knowledge, sir. I think my answer was perfectly fair. I saw at least those books in the office of the company some time after August, 1914. That is all I can say. I don't know who kept them or where they were kept; but, as I said in the other interrogatories, so far as I knew they were always in the custody of the secretary of the company. From somewhere in 1915 until the forepart of the year 1918 I was in California, something like two years and a half.

Q. During your visit to the East between—

MR. MARTIN: If the court please, I don't think the witness is fairly asked about his visit in the East. I don't think the question is fair, because he is not testifying that he visited the East. That is where he lives.

MR. ROBINSON: Well, I think he understands what I mean.

At the time I left California after coming here the first time my departure was the latter part of July, 1914; the war was just breaking out; and I was away approximately one year. During that time I can't say that I ever saw any of the books or any books purporting to be the books of the Pacific Crude Oil

(Testimony of William H. Cochran.)

Company more than once. I might 'have seen the stock book; I probably did in connection with the stockholders' annual meeting; and I don't know but possibly the minute book was at the annual meeting too. That is all I can say that I saw. I have no recollection of seeing them more than on one occasion. I never made any examination of them, nor had any desire to, and no necessity to. I may have seen some of the books of this corporation since that one occasion, when I went back next time, but I have no positive recollection of that. I don't think I ever looked at their books more than a couple of times all of the time I represented the company. My best recollection is that I never saw any of the books except in the instance and in the manner which I have just testified, just to see who the stockholders were and what was going to be done at the meetings, that is all. It comes to me now that I read the minutes of all their meetings to see what had transpired, and I think once I looked over the stockholders' books to see who the stockholders were. My best recollection is that I read the minutes about the first time I went back, in the latter part of 1914, or it might have been in January, 1915; I couldn't give the exact date. That was the only occasion when I did make such an examination, unless I made it later on, but I have no particular recollection of that. That was the time that I ran down to see what the company had done and what it had been doing. After leaving California in July, 1914,

(Testimony of William H. Cochran.)

at the time the war was breaking, and I went down through Virginia and stayed about a week, and then went right straight to Philadelphia and New York, and I think I went to New York and then came back to Philadelphia, or vice versa, I couldn't say which, and I saw them immediately on my arrival there, which certainly was approximately three weeks after I left California, certainly some time during August. There was no formal meeting; it was simply conferences and consultations about what was being done out here and what had been done. It took place in different places. The Pacific Crude had an office of their own at that time in the Brown Brothers Building, and some conferences took place in there,

and some of them might have taken place in Mr. Burns' office, who had an office in the same building. There were no formal meetings at all that I attended. I didn't attend a formal meeting until I attended a formal meeting of the stockholders in January, 1915, at the main or principal office of the Company in Wilmington, Delaware. All the officers and directors were present, and a number of the stockholders. I could give you only a very few of the individuals present at the stockholders' meeting in Wilmington, Delaware. I know that Mr. Duplaine was there; he

Tibbetts
was acting as president; and I know Mr. Davis was secretary and treasurer there, and a gentleman by the

(Testimony of William H. Cochran.)

name of Fuller, who represented certain stockholders,

and who was a director, was present, and Mr. Burns, who was a director, was present; and there was another director at that time, I don't remember just what the name was, but I know he was present, because they had a full membership of the board, and then I didn't know but very few of the stockholders personally outside of those whose names I have mentioned. There were some people there—Mr. Jackson, who was president of the lock works, and a Mr. Taylor, one of the officers of the Remington Typewriter Company, and there were quite a number of others I do not recall; I was not personally acquainted with them. To the best of my recollection all of the persons were there present at that meeting acting or purporting to act or to be the directors of that corporation. There was the president, Mr. Duplaine, and the treasurer and

Tibbetts

the secretary, Mr. Duboise, and there was Mr. Fuller and Mr. Burr, and then the fifth one, I am not sure, at that time, just who it was, but I know he was there, because I remember distinctly that all the officers and directors were present; five persons purporting to act as directors of the corporation were present. That meeting was early in January, 1915. That is all I can tell you. Since that time I never attended any formal meeting of the directors or stockholders of the Pacific Crude Oil Company. I was not a director, but of

(Testimony of William H. Cochran.)

course I had a few shares of stock in the company and attended the stockholders' meeting at that time and explained to them what I had done. After my return in the summer of 1915 to California I remained continuously in California until about the first of the year 1918. My departure was fairly early in January; I couldn't give the exact date. I went right back home then to New York and Philadelphia. To both New York and Philadelphia. We don't think anything of the distance between New York and Philadelphia; we run over there in a couple of hours. As to whether my occupation is that of attorney-at-law, — I don't know whether you are using that word "occupation," technically or not. I cannot say that I am engaged in any occupation practicing as an attorney now. As a matter of fact, my occupation just now is trying to get this property.

(At this point the plaintiff rested.)

MR. ROBINSON: If Your Honor please, we move to strike out the testimony of the witness Cochran as having been retained to act as attorney for the corporation Pacific Crude Oil Company, and — shall I make my motion general, Your Honor, as to all of the different facts instead of segregating it as to different items?

THE COURT: Well, just as you please. You want to make a record, I presume.

MR. ROBINSON: Then I move to strike out the testimony of Mr. Cochran as to the execution of the

(Testimony of William H. Cochran.)

assignment which was admitted in evidence as Plaintiff's Exhibit No. 8, and move to strike out the assignment, Plaintiff's Exhibit No. 8, on the ground that the testimony is hearsay, no proper foundation laid, that it is incompetent, irrelevant and immaterial; and to strike out the exhibit on the ground that there is no proper foundation laid, that it is not properly or duly authenticated, and that it is incompetent, irrelevant and immaterial; and we move to strike out the testimony of Mr. Cochran as to the officers of the corporation, president and secretary, being Mr. Duplaine, president, and Mr. Tibbets, secretary, in 1914, and the testimony that the same persons were officers in 1917, and the testimony that Mr. Potter and Mr. Duplaine were the president and secretary in 1918, at the time of the signature to Plaintiff's Exhibit No. 8, on the ground that it is not the best evidence and is hearsay, and that no proper foundation has been laid, and that it is incompetent, irrelevant and immaterial. I think that covers it.

THE COURT: The motion is denied.

MR. ROBINSON: Exception. (P. 91.)

DEFENSE.

FRANK T. BARNES,

a witness called on behalf of the defendant, having been first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON:

My name is Frank T. Barnes; my occupation, reg-

(Testimony of Frank T. Barnes.)

istry clerk in the office of Secretary of State Frank C. Jordan of the State of California at Sacramento; have been such registry clerk since January 2, 1911.

MR. ROBINSON: We wish to show by this witness that the Pacific Crude Oil Company named in this action has never filed a copy of its articles of incorporation with the secretary of state or with the county clerk, and that it did not designate at any time an agent to represent it in the state of California nor comply with any of the provisions of the statutes of the state of California with reference to qualifying the corporation to do business in the state or to acquire or hold or transfer real property in the state.

MR. COCHRAN: If you mean by designating an agent to accept service of process,—

MR. ROBINSON: Yes.

MR. COCHRAN: Well, then, we concede all that they want to prove.

THE COURT: How about the last statement?

MR. COCHRAN: Well, if he means by designating an agent,—

(Last part of statement by Mr. Robinson read.)

MR. COCHRAN: If you will limit yourself to proving that we never filed any papers, I will concede that.

MR. ROBINSON: Never filed any paper at all with the Secretary of State.

MR. COCHRAN: No; I will concede there are no papers on file in the Secretary of State's office filed

(Testimony of Frank T. Barnes.)

on behalf of the Pacific Crude Oil Company. The effect of that I would not like to have inserted—

EXAMINATION BY MR. ROBINSON:

I made a search in the office of the corporation license tax, which is also a branch of our office, and I went to the office of the State Board of Equalization, and Mr. Wiley, the deputy there, made a search through his cards and records in my presence and there was nothing there. I also went to the franchise and license tax office and they had no record. I made a thorough search through the records of the office of the Secretary of State of the State of California for any copy of articles of incorporation of the Pacific Crude Oil Company, a Delaware corporation, and I searched for a written designation of a person residing within this state upon whom process might be served. Separate records are kept for the filing of such documents. I didn't find any such document. There was never such a document filed in the office of the Secretary of State by the Pacific Crude Oil Company. I made a search in the office of the corporation license tax of this state and the State Board of Equalization and no such certificate of designation or copy of articles of incorporation was filed in any of those offices.

(No cross-examination.)

ROBERT M. SHERIDAN,

a witness called on behalf of defendants, having been first duly sworn, testified as follows:

(Testimony of Robert M. Sheridan.)

DIRECT EXAMINATION BY MR. ROBINSON:

My name is Robert M. Sheridan; I am an attorney, and also deputy district attorney of Ventura county. That has been my occupation and position for the past two or three years. I was so engaged and occupied during the year 1918. I was acquainted with the proceedings for a writ of mandate brought in Ventura county by the Big Sespe Oil Company against E. C. McMartin, the sheriff of that county, to the extent that Mr. Bowker, the district attorney, and I as deputy, appeared for McMartin as sheriff in that suit. I don't remember the date, offhand, when we first appeared in that action, or when we were first cognizant of that action. On refreshing my recollection from certain correspondence that I have from the files, I would say that I first became acquainted with the fact that a petition for a writ of mandate had been filed along about the middle of March, 1918, that being the time when the writ of mandate itself was filed—when the petition was filed.

Q. Now at that time were you in communication, either orally or by written communication, with Mr. Cochran, the plaintiff in this case?

MR. COCHRAN: Now, Your Honor, we are opening up a very big door here. If they are going to try out what happened in this proceeding, then we are going into a whole lot; but that proceeding was entirely dismissed.

(Testimony of Robert M. Sheridan.)

THE COURT: You admit that you knew they were claiming it?

MR. COCHRAN: Certainly; I have never disputed it.

THE COURT: Then there is no necessity for going into the evidence.

MR. COCHRAN: I admit we knew it. This brings us back again to the motion to dismiss. Your Honor denied the motion to dismiss on the ground that we were not parties. That is the only question here.

MR. ROBINSON: We offer correspondence of Cochran showing that he was advised of the proceeding.

THE COURT: Let the correspondence go in.
EXAMINATION BY MR. ROBINSON:

I have some correspondence there concerning the mandate proceedings — correspondence with Mr. Cochran.

MR. COCHRAN: To save time I will concede it was March 30, 1918.

(Defendant here offered letter of March 30, 1918, from W. H. Cochran to Arthur Sheridan, with its enclosure of a copy of letter sent to Judge Rogers.)

MR. ROBINSON: Any objection to that?

MR. COCHRAN: Well, so as not to prejudice our position, I object to any of this correspondence going in, as incompetent, irrelevant and immaterial.

MR. ROBINSON: But the signature of the letter and the fact that it was transmitted is admitted?

(Testimony of Robert M. Sheridan.)

MR. COCHRAN: Oh, no question about that. No technicalities. I assume Your Honor overrules my objection, and I take an exception. (P. 100.)

(Letter last above offered filed as Defendant's Exhibit "A".)

MR. ROBINSON: Is it stipulated that was signed by William H. Cochran?

MR. COCHRAN: Yes.

EXAMINATION BY MR. ROBINSON:

Q. I will ask you, Mr. Sheridan, from an examination of this document and any memoranda you have, whether you can tell whether the hearing on the writ of mandate came up or took place in court on the first of April as mentioned in that letter or at a later date?

MR. COCHRAN: It is objected to as irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 101.)

A. My independent recollection is that that matter was not heard on the day it was set, that is to say, the 1st of April, but that it was continued. Independent of that recollection, however, I note in my partner's, Mr. Bowker's, handwriting, a pencil notation on this copy in the following words: "Continued to April 15, 1919, at ten o'clock A.M." Now as to whether it was heard on that date or not, I could not, without further reference to correspondence, tell at this time.

(Testimony of Robert M. Sheridan.)

MR. ROBINSON: I have a letter here dated April 19, 1918, to Hon. Don G. Bowker, signed "William H. Cochran". Is it admitted that that is Mr. Cochran's signature?

MR. COCHRAN: It is admitted it is his signature; but it is objected to as irrelevant and immaterial. (Witness continues.) I am sure that this letter dated April 19, 1918, was received at my office by Mr. Bowker. It was among the letters in the files, and I produced it from the files of my office.

MR. ROBINSON: We offer this in evidence.

MR. COCHRAN: It is objected to as irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 102.)

(Letter last above offered filed as Defendant's Exhibit "B".)

EXAMINATION BY MR. ROBINSON:

I find a memorandum of authorities among the papers in my files, which memorandum was referred to in the letter in evidence. I have no independent recollection as to whether I was present at the arguments referred to in that letter. I am pretty sure I was. I have no independent recollection of Mr. Cochran's being there at that time.

MR. ROBINSON: We have another letter, dated May 28, 1918. Will it be admitted that the signature to this letter is that of William H. Cochran, the plaintiff in this action?

(Testimony of Robert M. Sheridan.)

MR. COCHRAN: This is Mr. Cochran's signature. We object to it, though, as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 103.)

MR. ROBINSON: This is offered in evidence.

(Letter last above referred to filed as Defendant's Exhibit "C".)

EXAMINATION BY MR. ROBINSON:

I will ask you, Mr. Cochran, if you will produce the letter of June 1 from Mr. Bowker in answer to the—

MR. COCHRAN: Have you a copy of it?

MR. ROBINSON: Yes. Will you admit this is a copy?

MR. COCHRAN: Yes. But we object to its introduction as incompetent and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 104.)

MR. ROBINSON: You admit this is a copy of a letter that you received?

MR. COCHRAN: Yes.

(Letter last above referred to filed as Defendant's Exhibit "D".)

MR. ROBINSON: The signature "Don G. Bowker" is supplied by the admission of counsel.

MR. COCHRAN: Yes.

MR. ROBINSON: We now offer letter of June 6, 1918, to Don G. Bowker if the signature of William H. Cochran is admitted.

(Testimony of Robert M. Sheridan.)

MR. COCHRAN: That is his signature, but I object to it as irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 105.)

(Letter last referred to filed as Defendant's Exhibit "E".)

MR. ROBINSON: We will next offer letter of July 27, 1918, that is, copy of letter. Will it be admitted that this is a copy of the letter sent by Mr. Bowker and received by Mr. Cochran at Los Angeles on July 27, 1918?

MR. COCHRAN: Yes, but the offer is objected to as irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 106.)

(Letter last referred to filed as Defendant's Exhibit "F".)

THE COURT: Does that relate to the suit that was dismissed?

MR. ROBINSON: No; this is the subsequent one, I believe.

MR. COCHRAN: That is in the second proceeding.

MR. ROBINSON: Yes. This relates to the answer of McMartin to the writ of mandate which was finally issued.

We will now offer a letter dated August 3, 1918, addressed to Hon. Don G. Bowker, Ventura, Cali-

(Testimony of Robert M. Sheridan.)

fornia, if the signature of William H. Cochran is admitted.

MR. COCHRAN: The signature is admitted, but it is objected to as irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. ROBINSON: And it is admitted this was sent to Mr. Bowker at that time?

MR. COCHRAN: It is so admitted.

MR. ROBINSON: We offer it in evidence.

(Letter last above referred to filed as Defendant's Exhibit "G".)

MR. ROBINSON: We will offer the copy of a letter sent by Mr. Bowker to Mr. Cochran on August 9, 1918. Is it stipulated that that was received, Mr. Cochran, from Bowker, and signed by Bowker?

MR. COCHRAN: It is so stipulated.

MR. ROBINSON: We offer it in evidence.

MR. COCHRAN: We object to it on the ground that it is irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception. (P. 108.)

(Letter last above referred to filed as Defendant's Exhibit "H".)

That is all of the correspondence that I have had subsequent to that time, all I could find in the files.
CROSS-EXAMINATION BY MR. COCHRAN:

I said it was my recollection that I was present at the hearing of this so-called mandate proceeding. I don't recall anything that occurred at that proceeding

(Testimony of Robert M. Sheridan.)

very distinctly. I said I didn't recollect that Mr. Cochran was present at that hearing. I don't know whether he was present there or not. I do not think I recollect Mr. Cochran trying to address the court when that mandate proceeding was called for hearing or anything of that kind. I don't recollect that Mr. Cates, who appeared at that meeting on behalf of the Big Sespe Oil Company, objected to Mr. Cochran's appearing or being made a party or even being allowed to speak at that proceeding because he was not a party to the proceeding. I don't recall anything that happened then at the first proceeding sufficiently to testify. I know, as a matter of fact, that the parties to the first mandate proceeding were the Big Sespe Oil Company as petitioner and E. G. McMartin as sheriff, as the only respondent. I think those were the only parties that appear in the pleadings; the only ones that appeared in the proceedings so far as the records show, as far as I know. In the second proceeding there were the same parties, as I recall. So far as the records are concerned, no other parties appeared in that proceeding either on the record or in the pleadings or otherwise.

WILLIAM H. COCHRAN,

recalled as a witness on behalf of defendant, testified as follows:

DIRECT EXAMINATION BY MR. ROBINSON:

If the letter dated April 19, Defendant's Exhibit "B", refers to the hearing on the first mandate pro-

(Testimony of William H. Cochran.)

ceeding, I was present on that previous Tuesday at that hearing on the first mandate proceeding. I was living in Los Angeles at that time, April, 1918, on Hobart street, I think, not at the Angelus Hotel. I had the address of the Angelus for mail and telegrams, that is all. All the time I was out at that time I lived here in Los Angeles on Hobart street, or in the city of Los Angeles, all the time I had this correspondence. I was in Los Angeles when this letter of June 6, 1918, was written. I was also in Los Angeles August 3, 1918. I have no recollection of being in Ventura county between June 6 and August 3, 1918. The only time I recall I went up to Ventura was on the first night of the proceeding I arrived there. That is the only time I recall. No, I didn't go east early in 1918; I went about the first of January, 1919, last year. I was not in the East during 1918; I was out here. Unless I might have gone out for a day or so, I was in Los Angeles county all the time between August, 1918, and January, 1919, living here. During that time I visited Ventura county and the property in question. I have no recollection of visiting the property at any time after the sale. I am quite sure I didn't visit it.

CROSS-EXAMINATION BY MR. MARTIN:

Regarding what took place at the time of this hearing at which I was present, the first mandate proceedings in the Superior Court of Ventura County that was testified to on my direct examination, I went up

(Testimony of William H. Cochran.)

to Ventura at the date of the hearing, and met Mr. Bowker for the first time and talked to him a little bit, so he said I seemed so well-informed about it that he would be obliged if I would address the court on the matter; and so as soon as the matter was called I think he presented me to the court. In any event, I started to address the court on the matter, and immediately Mr. Cates, who represented the petitioner Big Sespe Oil Company, one of the attorneys here rose and objected to my speaking or addressing the court on the ground, first of all, that neither the Pacific Crude Oil Company nor myself as trustee were parties to that proceeding. He objected to us being made parties, and he objected to us being heard at all at that time, and Judge Rogers said, of course, if we were not parties, and Mr. Cates stood on that ground, he could not very well extend courtesies any longer, and therefore I was obliged to sit down, and Mr. Bowker took the matter up from that time on.

(An adjournment was thereupon taken until Wednesday, April 7, 1920, at ten o'clock A. M.)

LOS ANGELES, CALIFORNIA, WEDNESDAY,
APR. 7, 1920. 10:00 A. M.

WILLIAM H. COCHRAN, Recalled.

CROSS-EXAMINATION RESUMED BY MR.
ROBINSON:

Referring to the letter of March 30, 1918, being defendant's Exhibit "A," and to the enclosure, being copy

(Testimony of William H. Cochran.)

of letter to Hon. Merle J. Rogers, Court House, Ventura, California, Merle J. Rogers was the Judge of the Superior Court who heard the proceedings on the two applications for writ of mandate which were referred to in the pleadings here.

MR. ROBINSON: We offer in evidence the deed of E. G. McMartin, Sheriff of the County of Ventura, State of California, to the Big Sespe Oil Company, dated the 29th day of August, 1918, recorded in Book 163 of Deeds at page 340 of the Records of Ventura County, California, being the deed described in paragraph 14 of complainant's bill, in which the book and page of records is given, as shown by the certificate upon this deed which we now offer.

MR. COCHRAN: Is that the same deed that is referred to in paragraph 14 of the defendant's answer?

MR. ROBINSON: Yes. We offer it as a certified copy of the record which is referred to in those two pleadings.

MR. COCHRAN: If Your Honor please, we object to it on two grounds. In the first place it is not the best evidence. The original deed certainly must be in the possession of the defendant, and it certainly would not be fair for them to disclose what reason they had for not producing the original at this time rather than the copy. However, the main objection I have to it is, as I said yesterday afternoon, just before the court adjourned, a public officer has no right to convey title without some statutory or legal authority. Now he pre-

(Testimony of William H. Cochran.)

tends by this instrument which is now offered in evidence to execute the same by virtue of the writ of mandate. Now I submit, Sir, that until his writ of mandate and his authority under that writ are approved, there is no authority shown for this officer executing this instrument, and for that reason I object to it unless the authority is itself proved and established.

THE COURT: I am inclined to think gentlemen, that to admit this deed in evidence over the objection of the plaintiff is very likely to be error. I will overrule the objection. You gentlemen will have to take the responsibility for it.

MR. COCHRAN: I really had two objections.

THE COURT: Yes; the other objection was that they had to produce the antecedent proceedings.

MR. COCHRAN: Yes, to show the authority.

THE COURT: Now I think this section, 1928, obviates the necessity for that.

MR. COCHRAN: I would like an exception to both rulings.

THE COURT: Yes. (P. 130.)

(Document last offered in evidence filed as Defendant's Exhibit "I".)

(The certificate of the Secretary of State of the State of Delaware, previously referred to and not admitted, was marked Defendant's Exhibit "J" for identification.)

MR. COCHRAN: Now, if Your Honor please, I move to strike from the record this deed which has just

(Testimony of William H. Cochran.)

been admitted in evidence on the ground that if, as Your Honor holds is the law, this deed is *prima facie* evidence of the Sheriff having received the writ, and therefore that this deed is *prima facie* evidence of his having conveyed this property, it is also likewise in evidence that neither the judgment debtor Pacific Crude Oil Company nor the assignor, the complainant in this suit, was a party to the proceedings in which that mandate was issued, and therefore I submit that they are not bound by the mandate or any of the proceedings in which that mandate was granted, and therefore, naturally, they cannot be bound by the date, and therefore it is irrelevant and immaterial, and therefore I move to strike it from the record. Mr. Sheridan has testified that neither the plaintiff nor its assignor was a party to this mandate proceeding.

THE COURT: The motion is denied.

MR. COCHRAN: Exception (p. 132).

I now move, because of the failure of any testimony to show that the Pacific Crude Oil Company comes within any proviso or requirements of the statutes requiring them to file any papers in California, that all of the testimony of Mr. Barnes be stricken from the record as irrelevant and immaterial.

THE COURT: I will overrule the objection.

MR. COCHRAN: Exception (p. 133).

MR. COCHRAN: I move to strike out all of the testimony that Mr. Sheridan gave yesterday as to the correspondence between his firm and Mr. Cochran on

(Testimony of William H. Cochran.)

the ground that it appears from the testimony mentioned that neither the Pacific Crude Oil Company nor the complainant in this action were parties to either of the mandate proceedings to which that correspondence relates.

THE COURT: Is the motion opposed?

MR. ROBINSON: Yes.

THE COURT: The motion is denied.

MR. COCHRAN: Exception (p. 134).

WILLIAM H. COCHRAN,

recalled on behalf of plaintiff.

DIRECT EXAMINATION BY MR. MARTIN:

Prior to March 1, 1918, I did have a number of conversations with Dr. Mills, who was the secretary and treasurer of the Big Sespe Oil Company, and I also had some correspondence with him relative to this matter of a statement of the rents and profits in operation of the property in dispute. Shortly after the sale of the property on March 3, 1917, I took up with Dr. Mills the question to see what could be done with the whole situation, and we discussed that for several weeks, and probably it ran into months, and there were various propositions pro and con, but we never seemed to be able to arrive at any conclusion as to what should be done; and finally, towards the fall of 1917,—I remember it was certainly by that time—it might have been earlier—I told him I would like to have a statement of just what monies they had received from the

(Testimony of William H. Cochran.)

property and what the expenses had been so that I would know just what moneys were necessary to redeem it. We talked that over not once but several times, and he said he would get them up, but he had to see Mr. Hornada, who was the man in charge of the property. He is one of the stockholders of the Big Sespe Oil Company, and he has always been in charge of the property at Ventura. He said, "You will have to talk it over with him to see what bills and things he has." Well, he promised me in that way several times, and finally, when it was getting very late, I 'phoned Dr. Mills in the early part of January, 1918, from Los Angeles to Santa Ana, and told him I was coming up to see him, that something had to be done about getting these figures. I went up by appointment and went to his place in Santa Ana. I telephoned to Santa Ana and then I went to see him the next day, I think it was, at Santa Ana, and we spent the whole forenoon together talking over the situation, and he told me about the fire, and the new derricks, and he didn't know just what the cost of them had been. He says, "However, I will get that statement up for you and let you have it just as soon as I can get the figures from Hornada." I waited several days, and have forgotten just whether I wrote him or 'phoned him or met him, but in any event, on the 21st of January I received this memorandum, which was written by Dr. Mills, and it was left for me at the Angelus Hotel, where I received all my mail and telegrams. I know his handwriting very well.

(Testimony of William H. Cochran.)

That little notation, "Received January 21, 1918," is in my handwriting, after I received it.

(Document last above referred to received in evidence as Plaintiff's Exhibit No. 9.)

Mr. Clampitt referred to there was President of the Big Sespe Oil Company and has always been President, so far as I know, ever since the organization of the Company. Following this memorandum, which I received on the 21st, I called up Dr. Mills at Mr. Clampitt's office and we had some conversation again about this statement, and he repeated to me that he was still waiting to get these figures from Hornada, and that of course until he got the figures from Mr. Hornada he was unable to give me the data I asked for. I thought that conversation was unsatisfactory, and I sat down and wrote a letter to Dr. Mills. I didn't receive any reply to that letter. I talked over the telephone and then sent a letter, which I presume the other side has.

(Copy of letter last referred to filed as Plaintiff's Exhibit 10.)

The portion of the letter, "At the time of our personal interview on the 15th instant," that was the interview after at which I went to Santa Ana and talked to Dr. Mills. That letter was signed by myself. I received a reply to that letter from Dr. Mills, dated June 25, 1918.

(Letter last above referred to offered in evidence and filed as Plaintiff's Exhibit No. 11.)

(Testimony of William H. Cochran.)

After the receipt of that letter, which I didn't receive for a day or so after its date, I wrote a letter to Mr. Cates, attorney for the Big Sespe Oil Company, who is appearing for the defendants in this case.

MR. ROBINSON: This letter is only admitted to show the activities and to rebut the evidence on the question of laches.

THE COURT: It is limited to the question of laches, yes.

MR. MARTIN: Yes; we want to show that we were not neglectful.

(Letter last above referred to offered in evidence and filed as Plaintiff's Exhibit No. 12.)

That letter is signed by myself. I received a reply to this letter from Mr. Cates, dated January 29, 1918.

(Letter last above referred to offered in evidence and filed as Plaintiff's Exhibit No. 13.)

I made further efforts to get that statement. I then made the effort which put me in the legal position specified by Sec. 707 of the Code, serving a written demand as required by Sec. 707, and that is the demand in evidence, served March 1, 1918.

I don't think of anything else.

CROSS-EXAMINATION BY MR. ROBINSON:

(The Court here stated that Plaintiff's Exhibit 8 included the affidavit of acknowledgment attached to the purported assignment comprising part of that exhibit. That the whole paper will go in.)

(A recess was thereupon taken until two o'clock P. M.)

(Testimony of William H. Cochran.)

Two o'clock P. M.

MR. ROBINSON: Before the matter is closed, Your Honor, there is one other matter we would like to offer in evidence, which was suggested somewhat by the remark of the Court, namely, the articles of incorporation, duly exemplified, of the Pacific Crude Oil Company, which we wish to offer in evidence. The articles will show the amount of capitalization and the status the corporation would have under the laws of the State of California, and what loss, if any, the State of California would suffer by the failure to register, and also the business in which this corporation was engaged, including the business of owning and operating such properties as are involved here.

MR. COCHRAN: It is objected to as irrelevant and immaterial. I do not see the competency of it. There is no dispute about the incorporation, and a mere certificate of incorporation can have no bearing on the California laws, nor the California laws on the certificate of incorporation.

THE COURT: The objection is overruled.

MR. COCHRAN: Exception (p. 148).

(The document last referred to was filed as Defendant's Exhibit "K".)

(Arguments.)

(An adjournment was thereupon taken until Thursday, April 8, 1920, at ten o'clock A. M.)

LOS ANGELES, CALIFORNIA, THURSDAY,
APRIL 8, 1920. 10:00 A. M.

(The general corporation laws of the State of Delaware, and also an act which is entitled "The Franchise Act," were admitted in evidence and filed as Plaintiff's Exhibit 14.)

(The case was then submitted to the Court, and a decision rendered by the Court, as follows:)

[TITLE AS BEFORE.]

Reporter's Transcript of Oral Decision.

THE COURT: Gentlemen, this seems to me a very simple case. The statute, Section 707, provides that—

"The purchaser from the time of the sale until a redemption, and a redemptioner from the time of his redemption until another redemption, is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days

after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or assigns shall, for a period of one month from and after such demand, fail or refuse to give such a statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action the right of redemption is extended to such redemptioner or debtor."

I am inclined to think that that would have been the law in a court of equity without that statute.

In the answer it is alleged that the plaintiff is the holder of the legal title as trustee for the Pacific Crude Oil Company, the debtor in the suit, and whose property has been sold. This demand for accounting is signed by Pacific Crude Oil Company, by William H. Cochrane, its attorney, William H. Cochrane as Trustee for the Pacific Crude Oil Company, and by William H. Cochrane. The defendant here, Big Sespe Oil Company, received rents and profits; that is conceded. Now this demand was made within the period of redemption—March 1, 1918—and is in due and legal form. I think that William H. Cochrane had a right to redeem this property from that sale of his own volition. I am inclined to think it was his duty to redeem it as Trustee, if such redemption were necessary to clear the title.

But aside from his duty as Trustee, he had an assignment from the Pacific Crude Oil Company of a right to redeem.

Now since William H. Cochran was of record as being the owner of the legal title to this property, I cannot see any reason for the Big Sespe Oil Company demanding from him his authority or saying that they would give an accounting to the Pacific Crude Oil Company if proper authority was presented by Cochran in demanding it. I am inclined to think the Big Sespe Oil Company ought not to have been so technical. Their conduct in refusing that statement does not appeal to this court as being conduct in a spirit of fairness at all. However, I am thoroughly of the opinion that this demand was legally and properly made, and a statement should have been delivered. Right and justice required it, and the statute demanded it. No statement was delivered. It was the duty of the Big Sespe Oil Company to make this statement. Now I have reached that conclusion clearly and beyond any question.

And what is the defense here to this suit? It is not the statute of limitations, but a defense of laches. That is the only defense I see that is presented here. And upon what is that defense founded? It is founded upon the wrong of the defendants in failing to give the statement. Even if the statement had been made at the time of this proceeding against the sheriff of Ventura County, it might have been said then to be the right of the plaintiff to get busy and bring suit, but as

long as the defendant was in the wrong I do not see how the defendant could complain that the plaintiff did not ask and compel it to make an accounting. Why should any man whose duty it is to make an accounting complain because somebody does not sue him? That is really the gist of the thing. The defendant has been claiming here that the plaintiff did not sue the defendant soon enough; not soon enough by virtue of any statute of limitations, but the appeal is made to a court of equity that this action ought not to be maintained, because, forsooth, the plaintiff has not sued the defendant soon enough because the defendant had committed a wrong. Now I do not think any right ought to be founded upon a wrong, and that is what this is, in my opinion.

An interlocutory decree will be entered in favor of the plaintiff, and the case will be referred to Force Parker for an accounting of the rents and profits.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN DIVISION.

WILLIAM H. COCHRAN, :

Complainant, :

vs. : No. E. 26

BIG SESPE OIL COMPANY, : IN EQUITY.
a Corporation, et al.

Defendants.

HEARING BEFORE THE SPECIAL MASTER IN
CHANCERY.

HON. FORCE PARKER: May 17th, 1920.

THOMAS M. HORNADA,

a witness called on behalf of Complainant.

BY SPECIAL MASTER:

Q. What is your name?

A. Thomas M. Hornada.

DIRECT EXAMINATION

BY MR. COCHRAN:

I am an officer, director, assistant secretary of the Sespe Oil Company. I have been a director about nine years, nearly ten. The Big Sespe Oil Company was organized in 1896. I held no office before I held that of director. I became assistant secretary about 1913,

(Testimony of Thomas M. Hornada.)

I think, late in the year. I have been director for the past nine years and assistant secretary ever since then. L. A. Clampitt is a director and president of the Company. Dr. I. D. Mills is a director and secretary and treasurer. In addition the directors include Mrs. Clampitt and Mrs. Dr. I. D. Mills (I think her name is Elizabeth). The board of directors is composed of five individuals. Mrs. Clampitt is L. A. Clampitt's wife and Mrs. Mills is Dr. Mills' wife. I do not believe I can tell how long Mrs. Clampitt and Mrs. Mills have been directors. I think it has been seven or eight years. Mr. Clampitt has been president nine or ten years. Ever since I knew anything about the company I have been a director. Dr. Mills was made secretary and treasurer in 1910. My first connection with the Company was buying a little stock in the same at first and then afterwards I went to work there to make a living. I, therefore, associated myself with the Big Sespe Oil Company about nine or ten years ago. I first worked for the Big Sespe Oil Company with a pick and shovel, making a trail over the hills, right on the property involved in this suit. Finally I got so I could run a gas engine and the pumps which pump the wells. Later I did most anything there was to do and got into the business a little more. There were four wells drilled on the property when I went on it, all drilled before I went on, two being re-drilled after I got there—wells 3 and 4. Wells 3 and 4 are operating at present. From the time I went into the employ of the Big Sespe Oil

(Testimony of Thomas M. Hornada.)

Company nine or ten years ago I was not in continuous employment by that Company up to March 3, 1914. I left them the last day of October, 1913. Subsequently I went back. During the time prior to October, 1913, I was on the property. I was not exactly in charge of the property for the Big Sespe Oil Company; I had a man over me all the time. Subsequently I went back on the property the 19th day of July, 1915, for William H. Cochran, as trustee for the Pacific Crude Oil Company. From the time I went back in July, 1915, I remained continuously on the property until the sale under execution on March 3, 1915, and during that time, from July 15, 1915, to March 3, 1917, I was in full charge of the property for Mr. Cochran as trustee. Immediately after the sale of this property on March 3, 1917, I took possession of it on behalf of the Big Sespe Oil Company. I have been employed by the Big Sespe Oil Company on that property ever since that time. I am still up there. During this time from March 3, 1917, I was on the property but not in full charge of the property. L. A. Clampitt was over me as president and general manager. He was supposed to have the "say-so." I was the assistant secretary, Mr. Mills being the secretary. He was in a sense over me. From March 3, 1917, I actually lived on the property and operated it. It was not altogether under me that the various labor was hired on the property. I suggested a good many things and we talked the matter over.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

Part of the time I had charge of hiring and discharging employees, but part of the time Mr. Clampitt did.

BY MR. COCHRAN:

That was not divided as to any period of time. We would talk the matter over. I could not tell you how many times Mr. Clampitt was on the property after March 3, 1917. He was there a good many times; I kept no record. He had no particular date for coming up and he was often there and stayed several days at a time.

BY THE SPECIAL MASTER:

Mr. Clampitt was the manager when I was working under him, and when we wanted anything special done I would mention the proposition to him, and if he had no men in sight he would say to me to get the men. I went ahead and consulted him as I proceeded. He supervised a part of or ratified my acts from time to time. I would see him always twice a month, sometimes three times a month. The Big Sespe Oil Company was six miles north of Fillmore on the Big Sespe and the property comes right down to the river in Ventura County. Mr. Clampitt's place of business is in American Bank Building, Second and Spring Streets, Los Angeles. It is six miles from Fillmore to the wells and from Los Angeles proper I would say it was 64 miles to the wells. There are daily trains both ways within six miles, and he would come up often; I would

(Testimony of Thomas M. Hornada.)

say twice a month. I would be down here at least twice a month. I have been down here twice a month for several years. I came down to consult with Mr. Clampitt and Dr. Mills.

BY MR. COCHRAN:

At times I incurred obligations in connection with supplies and materials of various kinds for the property without evidence of it from Mr. Clampitt and Mr. Mills. When I could not get hold of Mr. Clampitt, it would be necessary to employ labor in the same way whenever I thought it necessary and I would go ahead. When I say "I could not get hold of him" I mean he was not there. Mr. Clampitt and Dr. Mills at times employed men and sent them up to work on the property. There was one man I have in mind that he sent up there last summer, since March 3, 1917; he is called Poncho. His last name I could not tell. Mr. Clampitt sent him. I think he sent him the first time in July, 1919. If I had the bills or my statement I might call to mind some other men that Mr. Clampitt or Dr. Mills sent (refreshing mind with bills and statement)—James McDonald, Mr. Clampitt sent, in the spring of 1919, and E. W. Ross, in September, 1919.

BY THE SPECIAL MASTER:

We commenced in 1919. Here is a teamster he sent up there, Charles D. Lehart, in 1917.

BY MR. COCHRAN:

I do not know what month. He got his money on the 9th of November, 1917. He sent W. D. Williams

(Testimony of Thomas M. Hornada.)

in 1917, in October. Two Williams' worked on the property; L. W. was one he sent up there in 1917. W. D. was there in October, 1917. I have examined my statement that is submitted with the account, while I have been testifying, and these are the only laborers which I can call to mind now which come within the question. These men were sent up by Mr. Clampitt, because I asked him to send them to me. The reason is not because I could not get labor up there, particularly; sometimes he would have men and want to put them to work. Immediately adjoining the property it was a fact that outside of such men as Lemonge and Hinckles, and possibly one other, it was very difficult to get any labor assistance up there, but about three or four miles away it would not be a fact.

BY THE SPECIAL MASTER:

L. W. Williams was up there in the latter part of 1917, finishing work in January, 1918.

BY MR. COCHRAN:

It was not always a fact that the reason I sent to Mr. Clampitt for a laborer was because I was unable to procure one. At times I had difficulty procuring labor, not always; when Mr. Clampitt sent labor it was because I had requested him to send them. He never sent any labor without we talked the matter over before hand. These arrangements between me and Mr. Clampitt were just personal conversations. I cannot call to mind letters to him requesting labor, because I was down there so often. In purchasing materials and supplies for the

(Testimony of Thomas M. Hornada.)

operation or improvement of the property I did not buy the same on my own initiative from time to time except some of them. Mr. Clampitt purchased the remainder at my request. I always told him what was needed up there and he would usually go and get it, unless it was some little item, and then he would say to me to go down there and get it. The purchase of these materials and supplies was arranged by personal conversations. When I first returned to the employ of the Big Sespe Oil Company on March 3, 1917, my arrangement with them was that I was to get the same as I had been getting, \$100 per month and my provisions for my own use, and for men when we had any men to board. When times got so close and high Mr. Clampitt and Mr. Mills agreed to give me a little more money. This was along in 1918, in the summer, I think. This new arrangement was for \$165 per month. I do not know that anything was said about provisions; I think they didn't care about it.

BY THE SPECIAL MASTER:

After the agreement they paid the provisions.

BY MR. COCHRAN:

There was a meeting of the board of directors on this subject. There was a resolution authorizing it. I can't tell you what meeting of the board. I have not the minute book with me. It was my practice to render each month to the Big Sespe Oil Company a written statement of my disbursements and expenses in connection with the property and including my salary. As a

(Testimony of Thomas M. Hornada.)

matter of fact the receipts for the oil runs which were made from the property went directly to Dr. Mills, as treasurer, so I had nothing to do at all with these. I simply sent in a statement of the expenses and he received the monies for the oil. In this monthly statement I put in my salary and whatever incidental expenses I might have had in connection with the operation of the property. Dr. Mills did not have any printed list. I just wrote it out with a lead pencil; that is all I had; I had no typewriter or pen and ink.

BY THE SPECIAL MASTER:

There were times when I had men for two or three days and I would give my personal check and take receipt and attach that to my monthly statement; otherwise the bill would be o. k'd and Dr. Mills would send check, for work done.

BY MR. COCHRAN:

If I didn't put the amount paid for provisions in my statement I would have the groceryman's bill. Whatever I paid outside I would put in as extra expenses, groceries, eggs, and different things I had to eat.

BY THE SPECIAL MASTER:

The only time the monthly statement would have contained any items for receipts was when I paid it out for labor or something like that, but if I would buy a couple of dozen eggs, I would buy it and pay for it. I never rendered a monthly statement of monies coming in. I never received any money.

(Testimony of Thomas M. Hornada.)

BY MR. COCHRAN:

The item in Schedule "D" of the account of April 20, 1917, the item, payment to the Star Livery Stables \$3. was for livery hire for hauling me up to the wells from Fillmore. I would get off the train or a bus at Fillmore and hire livery at Star Stables or Moore's transfer, which would take me up to the property. I don't think that the five items in Schedule "D", paid to the Star Stables are all for hauling me. I think I had them haul supplies in the way of lubricating oils and other supplies. I had them hauled up there. After March 3, 1917, I had these bills paid direct by Dr. Mills as soon as I could. I had no uniform charge for hauling me from Fillmore to the property with the Star Stables; we used to have, but they got so they would charge different prices at different times. In regard to the item under date of April 20, 1917, of \$3 to the Star Stables; May 25, \$2.50; June 19, \$2; July 18, \$2; September 22, \$4, I will explain that when these statements would come in, I would get a statement from the Star Stables, for instance, and that would go to Santa Ana and Dr. Mills would send a check. For half the time they sent the bill to me and I would lay it down and the first thing I knew it would be misplaced. I found three the other day.

BY THE SPECIAL MASTER:

The item of \$2.50, May 25, was two trips, one to the foot of the hill and one to the Oak Tree. The first

(Testimony of Thomas M. Hornada.)

one would be \$1.50 and the other \$1. I think this is the bill paid May 28.

(Adjournment to 3:00 P. M. same day.)

SESSION beginning 3 P. M., May 17, 1920.

Eliza P. Houghton sworn as Reporter.

T. M. HORNADA (on the stand)

DIRECT EXAMINATION (Resumed)

BY MR. COCHRAN:

The payments of April 20, May 25, June 19, July 18 and September 22, 1917, to the Star Stables was a bill for livery for taking me and sometimes a man up to the well. It would go to what we call the Oak Tree, sometimes to the foot of the hill. It would be different prices; but then at times they had the hauling of supplies that would cover these amounts.

MR. COCHRAN: With the exception of the May 25 there are no vouchers for any of those payments, excepting checks.

(Witness continues): I don't think that I can state the dates of the vouchers off-hand back in 1917. I know we had the hauling done there and we paid the bills. Often we had the Star stage carry supplies up there as well as taking me and the laborers up there, and that was independently of passengers. These livery charges were always from Fillmore to the well. Sometimes the hauling was from the property to Fillmore, though I don't remember about the Star Stables at these times. I have nothing in my memorandum

(Testimony of Thomas M. Hornada.)

concerning the payment on April 20, 1917. I have a memorandum for an alleged payment of June 19, 1917. It was one trip to Oak Tree of \$1.50, and the balance on a previous month of 50 cents, this being from Fillmore to the property for my own transportation. I have nothing as to the alleged payment of July 18, 1917, nor the payment of September 22, 1917, \$4. This last item could have been a trip up to the well with a team. At that time I was never carried by the Star Stables livery from Fillmore to the property or to this located point near the property for which I paid personally. After March 3, 1917, I paid none of the Star bills myself at all. I have paid something for my own passage for transportation from the property to Fillmore in 1917 for which I rendered no account and did not keep the bills.

BY THE SPECIAL MASTER

The items of payment to Moore's Transfer during 1917 and 1918 are not of the same general character. There would be items occasionally for transportation of men, but most of the transfer was hauling as distinguished from livery charges. Of course there were some accounts in there where it was hauling passengers.

BY MR. COCHRAN

The checks are all signed by the Big Sespe and made to the Moore Transfer Company. I am not able to give any information as to what that particular payment of May 25, 1917 of \$5.50, supported only by

(Testimony of Thomas M. Hornada.)

check, was for. I do not know what the payment of October 2, 1917, \$4, supported only by check, is for, unless it would be two trips to the well or the Oak Tree. The particular check of \$23.31, December 26, 1917, was for hauling a load up to the well on November 27. I have a bill in my hand for that amount. I do not know what the five items for hauling in the receipted bill of \$23.31 is for.

THE SPECIAL MASTER: Referring to bill dated December 17, 1917, T. M. Hornada, Big Sespe Oil Company, account of Moore Transfer, William Moore, Proprietor, bill for hauling, item of \$23.31 will be marked in evidence for identification as complainant's Exhibit No. 1.

BY MR. COCHRAN:

The payment of Feb. 19, 1918, \$11. Moore Transfer Co., and in connection therewith voucher No. 44; the services were for hauling freight from Fillmore to the property. I can tell you what these two express items are: they are for a working barrel on each trip, being items of December 15 and December 18, which reads "To well with express". I think the item of December 27, which reads "Trip to well with load" was for some tubing we got to pull the wells up. We had to pull these wells. I don't know what the payment to Moore Transfer Co. of March 15, 1918, \$7, in connection with which is statement that it is marked as voucher No. 49, is for. I kept no books. As to supplies and materials or anything whatsoever I have

(Testimony of Thomas M. Hornada.)

nothing to refresh my memory. I think the Big Sespe Oil Company books will not show what each particular hauling was for. I straightened the stuff around for the making of the account which has been filed with the Master. By straightening the stuff around I mean there was no system of keeping bills that were dropped in a little drawer. I took up all I could find and did not find all of them because I put in some cancelled checks to replace some that I could not find. The account which has been filed was made up from Dr. Mills book and returned checks, such vouchers as I could find, and his day book.

BY THE SPECIAL MASTER:

I mean Dr. Mills day book. I did all that alone, that is, the day book and ledger. (Referring to one produced by counsel). I do not know when I first saw that day book. I have seen it a number of times. The first time about two years ago, I guess. It was written and kept up two years ago. By saying that I made up this account practically from Dr. Mills check book and returned checks, I mean we were ordered to bring in all of these accounts and they had to be got together. I did not aim to put anything into this account that does not appear in the day book. I would say that the item of payment, Schedule C, of November 10, 1917 to Kerchkoff Cuzner Lumber Co. of \$64 was in payment of the voucher dated October 31, 1917. I know what was purchased to make up that \$64.

(Testimony of Thomas M. Hornada.)

It was some material to make some wheels to put up the wells. I think nothing but lumber was included in that item. This is for wheels for the wells. At the time the Big Sespe Oil Company took possession of the property on March 3, 1917 there were four wells. They never started drilling any new well. They made preparations in anticipation of starting to drill a well. The well was never named. The wheels I have testified about were two calf wheels and all the lumber in this bill went for those two. I made the two wheels and put them at No. 3 and No. 4 replacing wheels which were there previously. Between the time the Sespe Oil Company took possession of the property and the date of this purchase, fire had swept that property and destroyed all the derricks and rigs on it, and these calf wheels were to go with new derricks on No. 3 and No. 4, but they were not on any of the others. The fire was October 4, 1917. The item in Schedule "C," under date of December 20, 1917, \$292.79, was for lumber for derricks on No. 3 and No. 4 entirely. Under date of December 7, 1917, item of payment to Oil Well Supply Company \$81.73, was for Redding tubing, which was used in No. 3 and No. 4. The item of \$15.92, to Hollywood Lumber Company, December 20, 1917, was for lumber for No. 3 and No. 4 derricks. Item \$134.07, February 19, 1918, to Oil Well Supply Company, was for two working barrels and rope. We had it to make bull rope for these calf wheels, and some other small fixtures we

(Testimony of Thomas M. Hornada.)

had to have. They were used on No. 3 and No. 4. The rope was used in the pull of No. 3 and No. 4 where they were burnt. This last was used on No. 3 and No. 4 entirely for new derricks. Harper & Reynolds Hardware Store on Main St., Los Angeles: This item of payment of labor rendered June 12, 1919, \$32.45, without any supporting voucher, was for 200 lbs. of dynamite and a box of caps which was sent up to the property and was used for fixing the road, blasting out and clearing same. The Curran Bros. Lumber people in Fillmore. The item of alleged payment of November 21, 1919, \$703.32, without voucher to support it, was for lumber sent to the property which has not been used yet. We have not used any of it. It is all still lying on the property. The voucher of Oil Well Supply Company, \$52.82, for two separate plunger pumps, the same being part of the item of \$107. was for working barrels previously referred to by me that Moore hauled up, one being used in No. 3, the other in No. 4; and the other things on that bill, leather cups, were used on No. 3 and No. 4. Smith, Booth, Usher Company handle engines, pumps and a variety of different things. The item of \$2.98 for nickel babbitt was for the engine.

General matters covered by the small bills are for things in the way of small tools, files and repairs for gas engine; we had to have springs and different things for that engine. The bill of \$15.40 was for

(Testimony of Thomas M. Hornada.)

repairs, January 21, 1919, to the gas engine. Item 12-9-18, \$17.60 was repairs to engine. This battery was for repairs.

BY THE SPECIAL MASTER:

That item is \$2.98.

BY MR. COCHRAN:

It is part of the item of \$67.38, that is made up of a 1½-H.P. engine and some babbitts. It is a Hercules engine sent up to the property, where it still is, but not being used right now, because we have plenty of water. Before the rain set in we located it to pump water from the lower spring. It is connected up to piping to some point. When the rain set in we disconnected it. Before disconnected it was connected from the lower spring to the circulating tank above the engine house and was to furnish water supply. It was to furnish an additional water supply. It was not an additional water supply, it was a water supply.

BY THE SPECIAL MASTER:

It was the main water supply, all we had.

BY MR. COCHRAN:

Prior to putting in engine we had some water on the property from the canyon above, but that had stopped running when we put in engine. The item of August 6, 1919, being a payment to E. A. Clampitt Company, \$29.65, is for some ¾" pipe we had to use in making up this water system we put in, in the middle of the summer of 1919, which we completed, I do not remember just when. It took two days, about two days after

(Testimony of Thomas M. Hornada.)

August 6, 1919, it was finished. Some of the items on Schedule "C," besides the payment to Curran Bros. and E. A. Clampitt Company, were used on this property other than wells 3 and 4, to-wit, Harper & Reynolds was not used on 3 and 4, the same being dynamite used on the road. Item November 21, 1919, Standard Oil Company, \$7.30, was for lubricating oil for the engine. We had four, including all kinds, on the property in November, 1919. The gas engine about which I have testified was in the engine house proper and we had an engine on each of wells 3 and 4; the fourth was the gas engine that pumped water, which I have testified about in the summer of 1919. The items of payment in Schedule D to Ventura Cooperative Stores were all made for about the same line of purchases, mostly groceries and provisions; excepting for the month of January, 1918; the item which appears every month in Schedule D from April 20, 1917, to February 19, 1918, in various amounts to the Ventura Cooperative Store, might have included a little hardware occasionally. The purchase of hardware on April 17, 1918, from the Ventura Cooperative Store for \$18.25, was not the first purchase of hardware from them. The statements from the store were hardware and provisions. We received itemized bills from the Ventura Cooperative Store for these monthly purchases. The items would be sent along with the bills and it was up to me to pay them. My people trusted me to send them a monthly statement. They did not ask me for

(Testimony of Thomas M. Hornada.)

these itemized statements. I sent them every month their monthly balance. Some of these bills are around camp yet. That is the reason there are nothing but general statements on each monthly account to the company. I stopped buying provisions from Ventura Cooperative Stores in the spring of 1919 and commenced buying from Lee A. Phillips. The items of payment to Lee A. Phillips from June 28, 1919, to March 17, 1920, are mostly for provisions. Once in a while we would get a piece of rope, and a shovel occasionally; once in a while a handle for pick or shovel—just small items. C. E. Ingalls worked on the property from time to time.

BY THE SPECIAL MASTER:

The secretary treasurer paid the bills of the Ventura Cooperative Store and Lee A. Phillips.

BY MR. COCHRAN:

My monthly statements sent in say on the 1st of April, 1919, refer to the month previous and represented salary for the previous month say of March, 1919. A number of my statements refer to a jitney line, because when the livery stable went out of business there was no chance to get hauled on time. I had to pay cash. I usually went to a jitney-bus. It runs anywhere you want to go. I took it from Fillmore up to the wells. All items of jitney in my statement are for transporting me from Fillmore to the wells.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

That was six miles.

BY MR. COCHRAN:

Item of payment here on April 20, 1917, \$3.00, putting in water line, means C. E. Ingalls was employed for that. When the water is running in the canyon we get water for use in the camp. This bill dated April 9, 1917, was for work above the camp. The water line down the canyon got broken or went out every time it rained.

STATEMENT BY MR. COCHRAN: That item is \$3.00.

(Witness continuing): That was for putting in water line north of the canyon, not in connection with engine, as I testified about. I do not recollect what the payment to Ingalls July 2, 1917, \$4.50, is for, nor the payment to Ingalls March 15, 1918, \$3.00, in connection with which there is only a check. All the Ingalls items were for labor. The item of payment to Ingalls, April 17, 1918, \$3.00, that receipt shows one day on pipe line, and I would say it would be fixing up the oil line that leads from the tanks. I think the item of payment to Ingalls July 23, 1918, \$12.00, in connection with which there is a check marked "for labor", was for putting in a pumping jack to try to get some water from the canyon above. Payment of April 20, 1917, \$15.00, to La Bonge, with unreceipted bill for six days labor at wells, was for work that we were doing about the wells; at that time we were doing

(Testimony of Thomas M. Hornada.)

some work on the road, or it might be lifting a lot of barrels or wheels or fixing up some way. La Bonge might have done some work on the road. The item of May 25, 1917, \$8.75, as to which there is only check to LaBonge here I can't remember about, except that it is for labor. All of the LaBonge bills are for labor and oil. You will find some items for oil there later. Payment to La Bonge, Feb. 19, 1918, \$5. purporting to be for cylinder oil and rope, May 17, 1918, \$4.75, engine oil and cartage; June 27th, 1918, is cylinder oil. December 13, 1918, engine oil and hauling \$12.25, for oil used on the gas engine that pulled the pumping plant. Hodell was another laborer on the property. In regard to the first payment to Hodell, August 16, 1917, \$7.50, that bill which states that it was for three days labor on No. 3, and pumping plant, was probably for labor when we were pulling No. 3 and repairing the pumping plant some. The items of September 22, 1917, with receipted bill showing seven days labor, \$17.50, was for cleaning up and doing different things around the plant—roustabout work.

MR. ROBINSON: I will ask counsel for our information if the situation is that counsel does not dispute the fact that these sums indicated by these vouchers were spent in the general manner indicated by the vouchers on the property in question, but his inquiry is directed to the items so far as they can elucidate and will show the part of the property on which the supplies and labor was applied. If we can understand that

(Testimony of Thomas M. Hornada.)

it will save me a job that I see facing me of getting all of these supply houses to furnish me with the itemized bills.

THE SPECIAL MASTER: I was thinking of that, but so far as Harper Reynolds are concerned, they could probably furnish vouchers for items on invoices to you of almost all of these.

MR. ROBINSON: That would be a colossal job.

MR. COCHRAN: I think when we get through we will have some clear understanding. Now I am trying to find out what the situation is.

BY THE SPECIAL MASTER: At the present moment there is no disposition on the part of the complainant to dispute the expenditures stated to those made. If he seems to change his attitude I will let you know.

(Witness continuing): The items payment to Hodell, Dec. 26, 1917, \$100, and the item Jan. 25, 1918, \$41.25, total \$141.25, which latter is the amount of receipted bill which has been filed with the account, which bill itemizes 16 days labor in October, 22 days labor in November; 18½ days in December, all in 1917 were for cleaning up after the fire, and the different things there are to do in rebuilding, until Christmas. He took part in and assisted in the building of derricks 3 and 4. The fire was October 4. I can't say when we went to rebuilding. We started cleaning up the next day. It burned only one day. The derricks were finished January 7, 1918. We commenced building the

(Testimony of Thomas M. Hornada.)

derricks as early as October. We were building them all through October, November and December, up to the 7th day of January, 1919, I can't say the number of days Hodell worked at different things. Charles Rebert hauled all the lumber that it took to rebuild 3 and 4. The item of November 17, 1917, \$81, supported only by check, was for hauling that lumber. Earle Cole was a laborer on the property. The first item, Dec. 26, 1917, \$5.06, supported by check, was for labor building up derrick on No. 4. The item of payment to him Feb. 19, 1918, \$10.50, with a receipted bill, specifying three days labor, was for helping to get No. 4 to work. We started No. 3 along the first two days in January and No. 4 the 7th of January, but it did not work. We had to work on it several days, that is No. 4. No. 3 started around the first of January and kept on pumping right along. We had to pull No. 4 several times, when finally we got it to work about three days later than the 7th. We might have gotten it to work, it certainly was on the pump, by February 1, 1918, when Mr. Cole was paid by bill of that date. We had lots of trouble with No. 4 later. I can't tell the dates; I can't say how many times it has been off the pump. I know it has been off once; I suppose it has been off half a dozen times, or more. The last time it was off is right now, not because we stopped pumping. It has been off several weeks. It would pump at times. No. 4 gave us trouble. It does not run satisfactorily. We have got to keep fighting.

(Testimony of Thomas M. Hornada.)

Lots of times we have tubing jobs. It has been considerable work. Both wells gave us trouble, but No. 4 has given us more. We had it pulled several times before the fire, but right after the fire we had to work at it some time before we could get it to work satisfactorily, some time in January, 1918. I do not remember how many runs of oil we made in April of this year. The tickets there will show in April of this year we made only one run, and one yesterday, and that is the only other one since the first of April. We made two runs in March of this year. I do not know how many barrels of oil we ran yesterday. The tanks were not filled. I have no tickets with me, but as I came down I looked at the tanks, it looked within a foot and ten inches of being full. I would say that oil being one and ten inches down in the tank would indicate approximately one hundred and seventy-five barrels. We were pumping during April quite regularly. I cannot say what the nature of the work was, paid to Cole by item of March 15, 1918, \$6.00, as to which the receipted bill specifies it to be for two day's work. An additional well, No. 5, had been located on this property at the west side of the canyon, not as far south as the southeast end of the patented land. It is on a location claim. I could not say which one. The four wells are on the Nellie Bell location. The Nellie Bell claim joins the patented land on the northeast and comes down on the east side of the patented land, too. South of the Nellie Bell would be the Elwood claim.

(Testimony of Thomas M. Hornada.)

I do not know whether No. 5 is on the Elwood claim; it is not on the patented land as I said. I do not know exactly where the lines lie. The officers and directors and I did not carefully talk over the location of No. 5. I located it. After the location Mr. Clampitt came up there and tried to get me into a different location, but I stayed where I was. I did not take into consideration whether the location was being made on or off the patented land. I did not attempt to keep off the patented land because we could not get to it. I kept off the patented land. I did not intentionally keep off the patented land. I did not keep off the patented land purposely in order to try to make better patent rights on another one of the location claims. I did not exercise care in making the location so as to not get the location on the claim that the other four wells were on. I know that we are inside the boundary of the location of the patented land. We had half a mile to go each way. I did not pay any attention to the matter of the petition filed in Ventura Superior Court for a writ of mandate, that the Sheriff procured the deed to this property. We had lawyers to look after that part of the work. After having located this well No. 5 I did not drill. In preparation we made a grade. We already had the road built up to that location when I made the location. Regarding the grading, I am talking about the location. After the location was made I made a grade for the rig beside the road, just off to one side, cleared and levelled off the ground, so that

(Testimony of Thomas M. Hornada.)

the rig could be erected upon it. I bought some lumber, not all that was necessary for the work; all that I estimated would be necessary for it, which lumber was sent up on the property and the derrick erected and is still standing. It was a 66-ft. derrick. I expected to strike a shallow well. That is what we call a standard rig. Graded and put up the rig is all we did.

BY THE SPECIAL MASTER:

We never tried to drill at all. The patented land is up a steep hill over the mountain and it could not be gotten at. It would require a good deal of expense to build a road, but when the property is nicely developed the road will be built all right.

BY MR. COCHRAN:

The top of the mountain is a plateau. I do not know that I would say that the top of the mountain is the best part of the property, but was one of the best. I recollect getting an estimate as to what it would cost to build a road up to this plateau. I went over it with some people for the purpose of estimating it. My estimate was \$2,000. I do not remember giving Mr. Cochran an estimate in regard to it.

(Court adjourned to May 19, 1920, at 10:00 A. M.)

HEARING WEDNESDAY, May 19, 1920. at 10: A. M.

(Hearing resumed pursuant to adjournment.)

PRESENT: Same as before.

(Testimony of Thomas M. Hornada.)

PAUL LEHNHARDT, Jr., was duly sworn as special reporter.

THOMAS M. HORNADA, being previously sworn and examined. Examination in chief continued.

BY THE SPECIAL MASTER:

I find item December 7, 1917, Oil Well Supply Company, \$81.73, was not included in the item of February 19, 1918. The item of \$134.07 in Schedule "C," February 19, 1918, was made up of an item December 14, 1917, \$52.82, an item December 8, 1917, \$81.25. Those items of \$52.82 and \$81.25 represent different material from the material contained in item of December 7, 1917, \$81.73.

STATEMENT BY SPECIAL MASTER: Bill for \$81.73, Oil Well Supply Company to Big Sespe Oil Company, dated November 23, 1920, will be marked for identification as Complainant's Exhibit "No. 2".

BY MR. COCHRAN: Complainant's Exhibit "No. 2" for identification shows a purchase of Manila rope, babbitt and telegraph cord, which materials were used on the property. The rope was for bull ropes for No. 3 and No. 4. The telegraph cord was used for the engines attached to those two wells. The babbitt was for fixing up the engine after the fire. The same were for replacing what was used before the fire. Grading the ground and erecting a derrick was all that was done at the location of No. 5.

BY THE SPECIAL MASTER:

I testified that I had erected a derrick.

(Testimony of Thomas M. Hornada.)

MR. COCHRAN:

I added a rig to that derrick, that is the lumber part of the drilling rig. We put on the rig what is called the rig timbers. We hadn't dug the cellar. We hadn't broken ground except to fix the derrick posts and grade. We built a road up to this derrick from the regular road at the canyon. No. 5 lay south of No. 3 and 4, to the west of the road going up to No. 3 and No. 4. I did not say I made the road to No. 5. I said we built a new road up the canyon. We built a road from the southern portion of the property right up to the camp where 3 and 4 were located until we struck the part of it that had nothing washed out. We did not build a branch road to No. 5. No. 5 is on the main road up the canyon. No. 5 did not follow the line of the old road used to go up to the camp. It is further to the east than the old road.

THE SPECIAL MASTER: I would like to understand whether you are conceding that this company, Mr. Cochran, this defendant, should be allowed deductions for the items on which you are examining him.

MR. COCHRAN: I think for some of them, if the court please.

THE SPECIAL MASTER: In respect to No. 5?

MR. COCHRAN: Well, I do not care, I do not know that I want to define my position at this time, if the court please.

BY THE SPECIAL MASTER: But I want you to

(Testimony of Thomas M. Hornada.)

do it. I want counsel appearing before me to be willing and frank enough to express what is in their minds, otherwise if you don't Mr. Cochran, I will sustain objections made as to the testimony. That is why I want you to read those cases to which I called your attention, gentlemen. If you are going to concede that they will be allowed deductions for expenses to open this road, then your questions are proper. If you are not going to concede that they are not.

MR. COCHRAN: But, if the court please, they might be liable for them.

THE SPECIAL MASTER: Can't you get the data by examining the witnesses about it?

MR. COCHRAN: No, sir.

THE SPECIAL MASTER: Do they keep you from going on the property?

MR. COCHRAN: We are not raising any question about going on the property now.

THE SPECIAL MASTER: I don't see why you should interrogate the witness on matters you can learn outside of the court room.

MR. COCHRAN: We have to go into these matters to have them on record, to determine whether they are proper charges or not.

THE SPECIAL MASTER: I want you, Mr. Cochran, to be as candid with me as I am with you. I want to know whether you are taking the position that they ought to be allowed deduction or not allowed deduction with respect to the matters about which you are examining the witness.

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: To be frank with the court. I am contending that certain of the expenses will be allowed and certain of them shall not be allowed.

THE SPECIAL MASTER: How about the road in the canyon?

MR. COCHRAN: I think there may be a difference on that.

THE SPECIAL MASTER: What is your attitude?

MR. COCHRAN: I cannot tell you at this time.

THE SPECIAL MASTER: You are thoroughly prepared to try this case, I take it, Mr. Cochran?

MR. COCHRAN: Yes, but this is all new. I am trying to locate them. I am trying to find out what they are.

THE SPECIAL MASTER: I do not think the people are keeping you off the property.

MR. COCHRAN: That may be true, but that would not make our record clear if I did not ask these questions.

THE SPECIAL MASTER: The special master desires to state that he is very much impressed with the candor of this witness at the present time. However, go ahead.

BY MR. COCHRAN: (Witness continues.)

Outside of this road it is not a fact that I erected a bunk house down by the well nor any frame building at all, nor have I put up any engine or pump or tank down by the well.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

No, we are not claiming any deductions in this matter at all.

Q. BY MR. COCHRAN: Did you erect any new building on the property, Mr. Hornada?

MR. ROBINSON: Object to it.

THE SPECIAL MASTER: Sustained.

MR. COCHRAN: Exception.

MR. MARTIN: Note the exception, Mr. Reporter.

THE SPECIAL MASTER: Unless he claims some deductions, the objection will be sustained.

MR. ROBINSON: Unless the question is directed to some matter contained in the account, we shall object.

MR. MARTIN: Save the point.

THE SPECIAL MASTER: Yes, you have a right to inquire as to matters contained in the account.

MR. COCHRAN: What does your Honor rule?

THE SPECIAL MASTER: My ruling is very plain, you will proceed.

MR. COCHRAN: Exception.

BY MR. COCHRAN:

We did not run any water line to or make any connection with this well No. 5.

Q. Did you put up any pump or do any drilling of any kind at this well?

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: You mean at No. 5, Mr. Cochran?

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: At No. 5.

MR. ROBINSON: He said all he did was to put up a derrick, the lumber part of the rig.

Q. BY THE SPECIAL MASTER: Have you told us all you did at No. 5?

A. Yes, sir, all I did at No. 5.

THE SPECIAL MASTER: All right, objection sustained.

MR. MARTIN: Exception.

BY THE SPECIAL MASTER:

Q. Mr. Robinson, any objections to the complainant going on the property and seeing what was done there?

MR. ROBINSON: No, sir.

THE SPECIAL MASTER: Let the record so show.

BY MR. COCHRAN (examination of witness continued):

E. W. Ross labored on that property, as is stated in the account. In regard to item dated October 20, 1919, to E. W. Ross and voucher submitted with it showing three day's labor, that was for labor on the road with pick and shovel.

BY THE SPECIAL MASTER:

That \$58.50 was for pick and shovel work?

BY MR. COCHRAN:

In regard to item November 3, 1919, Frank Scott, \$112.50, supported by voucher showing 25 days labor in October at \$4.50 per day, Scott did various things for us up there; he worked on the road, he helped me

(Testimony of Thomas M. Hornada.)

on the well, pulling them out of the working barrel and different things.

BY THE SPECIAL MASTER:

Pulling them out of the "working barrel" means pulling your rods out?

BY MR. COCHRAN:

Item November 28, 1919, \$63.00, to Scott, which voucher shows fourteen days labor in November. Scott was working on the road helping me with different things, all the work being done on the property, principally roustabout work. He pulled out the wells and worked around the wells. In regard to item Albert Andre, November 3, 1919, \$39.00, supported only by check, was payment for setting up a four hundred barrel tank. This is a tank we started to put up at the foot of the grade.

THE SPECIAL MASTER: The wooden tank?

BY MR. COCHRAN:

The gauging tank, it was connected up with the main oil line of the property.

THE SPECIAL MASTER: Do I understand you to say, Mr. Cochran, that you do not dispute the amount expended here as furnished by the witness or the company, but you want to know what the items are for, is that your attitude?

MR. COCHRAN: That is what I am trying to find out.

THE SPECIAL MASTER: He said here that there was a derrick erected on the property, rather a

(Testimony of Thomas M. Hornada.)

tank erected, for storing or depositing oil produced on the property. In order to be frank with you I will say that this is an item for which I think there will be allowed a deduction. In other words, as part of the expense of producing oil. If you do not dispute the amount since you know what the purchases are for, Mr. Cochran, you should pass the item; that amount of \$39.00. I do not think we ought to spend any more time on that.

MR. COCHRAN: I do not want to spend any more time on that than I have to. I shall expend no more time on that except to ask him another question, which I intend to ask him.

BY MR. COCHRAN (witness continuing):

This was not a tank that we had on the hill. It is one we put in there. It was a second-hand, an old tank, riveted, shipped to the property and put in there to be used as a gauging tank.

BY THE SPECIAL MASTER:

I do not think you will find any other item of expenditure included in the expense of that tank. I remember no item which my company wishes credit for which was included in the expense of the tank.

BY MR. COCHRAN:

V. H. Casner worked from time to time on the property as teamster. Payments to him were entirely for hauling and pulling wells. By item December 26, 1917, \$6.50, showing two items for hauling oil, means that after the fire we had to fill our fuel tank in order to use

(Testimony of Thomas M. Hornada.)

the boiler to make steam to pull the well until we could get a pump on the well, and we had to haul that oil up the hill.

BY THE SPECIAL MASTER:

That \$6.50 was paid to him as teamster for hauling. Item of August 6, 1919, \$33.18, supported by this voucher showing work on the road with team and pulling wells and threading pipe and pulling well again, trip to Fillmore for supplies, that was all for development of oil upon the property.

BY MR. COCHRAN:

Again in regard to the Casner receipt, previous payment of \$6.50, I am not in error in saying that it was for pulling wells. In regard to payment of September 14, 1919, to Casner, \$4.50, for which there is no receipted voucher, but for which there is a bill, which says, "August 6th, hauling engine, \$4.50." Was paid September 19th and was in payment of that bill it seems. He hauled a little gasoline engine, a one and a half horse-power, from the foot of the hill to the well. That engine was put in use, as I said the other day, for pumping water from the foot of the hill to our settling tank. This engine came from Smith, Booth, Usher Company.

BY THE SPECIAL MASTER:

It was installed at our lower spring to pump the water up to the pumping plant. Item January 21, 1918, John Andrew, \$30.00, was for helping finish up rebuilding of the derrick after the fire. He left the prop-

(Testimony of Thomas M. Hornada.)

erty January 7th. L. W. Williams was a rig builder. Regarding payment to him March 15, 1918, \$285.00, voucher showing, "For rig builder and fishing out tubing," was for building the No. 3 and No. 4 complete after the fire, and he also pulled the tubing out.

BY THE SPECIAL MASTER:

Tubing in one well dropped something over two hundred feet and the other about one hundred feet and it took some work to pull that stuff out and straighten the tubing out again; what we call "the corkscrew".

BY MR. COCHRAN:

Receipt bills show that he worked in November and December, 1917, and in January, 1918, and was paid off, and he worked for us later. He worked on the property in 1920. He put up a derrick and rig.

BY THE SPECIAL MASTER:

There is a charge for it in this account under "Unpaid bills," right at the bottom of this schedule.

BY MR. COCHRAN:

He worked in 1920 on No. 5, and there also was a 32-foot derrick erected on No. 1, and a few days helping me on the other wells, but I do not just remember the days. All of this unpaid account for labor to Williams, \$232.00, was for rig building on No. 5 and oil derrick on No. 1.

THE SPECIAL MASTER (statement): I can see that possibly there might be some question as to whether there should be allowed some expense on No. 5. I am frank to say, gentlemen, that I do not know

(Testimony of Thomas M. Hornada.)

what that should be, but as I said * * * I want to understand where I am going—and I want to keep a grip on the situation. I do not want anything enshrouded in mystery, gentlemen, or anything kept from the special master, Mr. Cochran. Are you making that distinction there? Are you contending that there should not be allowed a deduction on 3 and 5 as distinguished from No. 4 and 5?

MR. COCHRAN: Yes, sir.

THE SPECIAL MASTER: I intend to, and probably will, look up the law myself on that. That is not clear.

MR. COCHRAN: My intention is that when the record is completed the motion to strike out would be in order, or that Your Honor will not consider the items which, from the evidence, should not be allowed. Then of course we shall submit our motion with whatever statement of law is necessary. We must take the thing as a whole.

THE SPECIAL MASTER: That is the point. Then I think we should not spend any time on items which will not be objected to.

BY MR. COCHRAN:

The derrick which we put up on No. 1 was an entirely new derrick. I erected none on No. 2.

BY THE SPECIAL MASTER:

No. 2 is not a producing well. No. 1 would be after it was fixed, but is not now. It has not been in my administration up there. It was a producing well six or seven years ago.

(Testimony of Thomas M. Hornada.)

MR. ROBINSON (statement): Previous to that the Big Sespe Oil Company were the original owners.
BY THE SPECIAL MASTER:

Prior to the control of the Big Sespe No. 1 was the big well. Six or seven years ago No. 1 was off the pump. The payment to James McDonald was for pick and shovel labor and for blasting. The item in payment to McDonald, April 19, 1919, shown by the receipted bill, fourteen days in March, \$42.00 was for labor, starting building a road on the inside of the canyon on the property.

THE SPECIAL MASTER: On the property through the canyon?

BY MR. COCHRAN:

Payment of May 7, 1919, \$90.00 with receipted bill for thirty days on the road is the correct statement of what Mr. McDonald did.

THE SPECIAL MASTER: This was on the property.

BY MR. COCHRAN:

The item—the next item for McDonald was June, 12, 1919, \$93.00, and the receipted bill therefor, thirty-one days on the road, is a correct statement of what McDonald did for that payment. The other work was for April. It is on the same road. Regarding payment July 3, 1919, \$90.00, for which receipted bill says, "It was thirty days in June building road", is a correct statement of his services on that payment. The next McDonald payment is July 28, 1919, \$72.00, for which

(Testimony of Thomas M. Hornada.)

bill says, "Twenty-four days for July, road work," is a correct statement of what he did for that payment. The only thing McDonald ever did, except building this road, was perhaps to have helped me two or three days on No. 4. Lile Ingalls also worked for me on the property. Regarding item of payment to him June 12, 1919, \$26.00, without voucher, was \$11.00 for working on the gas engine in the pumping plant, and the remainder, \$15.00, working on the road. Another item to him, June 16, 1919, \$22.50, with receipted bill for that payment, for five and five-eighths days, was for drilling in a rig, most of that time with a drill, preparatory to blasting to make the road I was talking about.

BY THE SPECIAL MASTER:

The wells were working and oil being produced during all these times the roads were being blasted. The work was done for the purpose of preparing a road to get to and from the property and was part of the development of the oil property to facilitate getting the oil to market. Unless we could get a road, when the road was washed out, we had to use a pack. We had to have the road to work those wells and extract the oil from the ground and to have it carried away to market. "Oil runs," allude to the transportation from wells to market through a pipe line from a tank, but you have to get material up on the property in order to produce that oil. There was a pipe line from the wells through which transportation was carried on.

(Testimony of Thomas M. Hornada.)

BY MR. COCHRAN:

L. L. Rasmusson was also laboring on the property. The payment to him of November 3, 1919, to the amount of \$56.25, and the bills in connection with this payment saying it is for twelve and one-half days of labor in October, was for working on the roads most of the time.

MR. COCHRAN: The voucher says only labor.

BY MR. COCHRAN:

The payment of November 28th to L. L. Rasmusson, \$31.50, with unreceipted bill for seven days labor, was for fitting up a new boxing, a main bearing on the gas engine that I had made. That is filled in by the brass foundry, but it has to be dressed up and the work took several days. Just how many I do not know.

BY THE SPECIAL MASTER:

Dressing up the brass boxing that goes in the engine.

BY MR. COCHRAN:

That is included in this \$31.50, but not entirely. I had him working helping me on some of the wells. He did no road work this time.

BY THE SPECIAL MASTER:

He had a great deal of work to do on the road. We had quite a difficult road to build. It was on the side of the hill; a very deep canyon, about fifteen per cent grade, average grade of the road. The roads we had to have there were something over one thousand feet, and is the road work referred to in this account.

(Testimony of Thomas M. Hornada.)

BY MR. COCHRAN:

Regarding payment November 8, 1919, to D. C. Basolo, \$55.52, supported by voucher which shows that it was for hay for mules, was not used on the property. It was used right next to the property at the lower edge. The Big Sespe Oil Company had some animals rented. They were not horses hired from Udell, but from a company in Los Angeles—four mules.

BY THE SPECIAL MASTER:

Hay was fodder for the mules.

BY MR. COCHRAN:

They were all mules used for hauling lumber from Fillmore to the property. The lumber went into a new rig or derrick on No. 5 or No. 1.

BY THE SPECIAL MASTER:

The derrick is the high part. It goes up 66 feet. The rig starts from the ground. The rig is heavy timber to set the machinery on, where they use the band wheel and crankshaft and stands out from the derrick.

BY MR. COCHRAN:

The rig does not go on the derrick. They do not call part of the rig the derrick. The rig is for holding the machinery with which the oil is abstracted. We are talking only about drilling. We do not have to have any rig for pumping. There is a difference between a pumping rig and a drilling rig. No. 5 derrick was begun along in the winter some time, I could not state the time now unless I have something to go by; the

(Testimony of Thomas M. Hornada.)

winter of the year 1919 and '20; No. 1 derrick was put up in December, 1919. No. 5 was put up after No. 1, —the latter part of December, 1919, or early part of 1920. The next item referred to, D. C. Basolo, \$3.00, January 24, 1920, without voucher, the account saying it is for coal, was for blacksmith coal used at the wells.

BY THE SPECIAL MASTER:

Derrick on No. 1 was put up before derrick on No. 5 was started. It is just a 32-foot derrick for pulling rigs and tubing. I tried to get that well back on the pump. That is all that has been done up to the present time on No. 1. I got it just that far. It was a 32 foot derrick, 16x16 feet. No other work has been proceeded with for the purpose of accomplishing the object of getting back on the pump. No. 1 was an old well or hole that was down six or seven years ago; started in the winter of 1919 or 1920 some time on No. 5. It is a new venture and is not producing as yet.

(Adjournment to 2:00 P. M. same day.)

HEARING OF WEDNESDAY, MAY 19, 1920,
2 o'clock P. M.

PRESENT: Same as before.

THOMAS M. HORNADA, being previously sworn and examined. Examination in chief continued.

BY MR. COCHRAN:

Schedule D, item of payment to James Udall, December 19, 1919, in amount \$45.75, accompanied by receipted bill, the first item being November 20, two

(Testimony of Thomas M. Hornada.)

teams at \$7.50, were for teams of horses we had used in snaking lumber up the hill.

BY THE SPECIAL MASTER:

The lumber was used in derrick on rig No. 5.

MR. COCHRAN: Not on No. 1.

THE WITNESS (continuing):

A similar item on November 22, \$2.10, and two teams, \$7.50 each, were for the same purpose, for snaking lumber to No. 5. Another item on bill December 8th, one team, was for the same purpose. Another item, December 9, for load from town, \$3.75, was for blacksmith coal hauled by him.

BY THE SPECIAL MASTER:

He hauled blacksmith coal—this is all part of the \$45.75?

BY MR. COCHRAN:

And there was some other things on that load also used up there at camp, some materials and some supplies, not lumber, some groceries, a can of coal oil, and a can of gasoline, just small items. The item in the bill December 2nd saying, "Extra men piling lumber \$4.50," was for piling lumber they snaked up on No. 5. All the lumber at this time was for No. 5. The item of schedule D, without voucher, \$10.90, March 2, 1920, to A. P. Assonty, laborer, was for expert writing up the income tax of Big Sespe Oil Company. I am sure of it. Doctor Mills told me it was for writing up the income tax. It was not for labor as stated in the ac-

(Testimony of Thomas M. Hornada.)

count. I did not have any voucher for that. I did not find a voucher for it.

BY THE SPECIAL MASTER (statement):

Well, we ought not to have much of a dispute about that. That ought to come off. I will mark it off of mine.

MR. ROBINSON: Evidently put in there by mistake.

BY MR. COCHRAN:

Among unpaid bills, schedule D, is item of Ferdinand Johnson, for labor, \$159.50, for which there is no voucher, was for work done by him with Mr. Williams to put up No. 1 derrick and also No. 5.

BY THE SPECIAL MASTER:

Work done by L. W. Williams and Jenson (not Johnson) were on No. 1 and No. 5, too. Schedule D, item March 15, 1918, E. A. Clampitt, \$10.32, accompanied by receipted statement, is for rental of such tools we used in pulling the tubing out of those wells after the fire at No. 3 and No. 4. One and two never were pulled. Regarding an item of \$5 in my statement of June 1, 1917, two days labor, I had a man working on wells No. 3 and No. 4 and I paid him for it.

BY MR. COCHRAN:

It could not have been work on the road or something else. Voucher No. 17, Schedule D, on my personal statement, dated July 5, 1917, \$3.75 advance for labor, I can't remember what it was for.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

It might have been on pipe line. We have an oil line that hangs, a part of it, on the side of the canyon and goes down the canyon and once in a while a rock will roll down and break our pipe line and it takes a day's work to put it up, sometimes three or four. We have the same proposition with the water line in the upper canyon. A man can't do it alone. He has to have help. When I do that I get a fellow for a day or two and pay him the money, advancing same myself. Mr. Cochran knows how I ran the business up there during his administration.

BY THE SPECIAL MASTER:

The item of \$3.75 for labor, voucher No. 17, item No. 17, of schedule D, was for labor connected with the wells, or labor connected with the pipe line.

BY MR. COCHRAN:

On my personal statement dated August 13, 1917, voucher No. 21, of schedule D, item "advance for labor, Ingalls \$3.25," was for C. E. Ingalls. That item was for pipe line broken just about the first canyon below the well, I think, and the statement of July 17, voucher 17, item, "advance for labor, Labonge, \$3.75", is R. F. Labonge and was paid for labor at the well. I might say that he worked on the pipe line that day, or worked pulling rods; I can't remember except that it was for the benefit of the property, I can tell you, everyone of them. On the same statement another item, "Advance for labor, Marley, \$4.50," was for

(Testimony of Thomas M. Hornada.)

work changing a wheel on the pumping plant, helping change a car-wheel. On my personal statement dated September 5, 1917, voucher No. 26, the charge, "Payment to Labonge for labor \$6.25, was for work performed in August helping me on No. 3."

MR. COCHRAN: The main voucher is No. 26.

WITNESS (continuing):

On my personal statement October, 1917, voucher No. 27, a charge of payment to W. D. Williams, \$11.40, to which a voucher is attached, signed by Williams, for four days work, \$8.00, which was for labor helping clean up there after the fire, cleaning the rubbish all off. On my personal statement dated December, 1917, item to John Andrew, \$5.00, voucher No. 45, was to the same Andrew about whom I have previously testified, and was for labor helping me on the pipe line and on No. 4, two days work. On my personal statement November 4, 1918, voucher No. 67, schedule D, charge \$14.00 to C. B. Brazil, was for labor tearing out No. 1 tank and rebuilding it. The item in my personal statement dated March 6, 1919, voucher No. 72, \$3.00, was for help on No. 3 well. No. 3 might have been operating on that day. On my personal statement August 10, 1919, voucher 85, charge of \$3.50, for labor on No. 3, was for a broken line. We probably picked the rods up, the plunger out of the working barrel. On my personal statement dated September 16, 1919, voucher No. 90, payment of \$2.50 said to be on well, I think was on No. 4. My personal

(Testimony of Thomas M. Hornada.)

statement dated October 14, 1919, voucher 93, payment of \$1.60 to Jensen, was for labor putting up a hanger for one of the pumping lines for No. 3. On my personal statement dated December 10, 1919, voucher No. 103, \$4.50, is said to be for extra help on No. 3 as we were putting in and repairing the lead lines from No. 3 to the tank. On my personal statement of March 4, 1920, voucher 110, item of \$3.50 for help on pipe line, was the oil line that leads out of the canyon, it broke about half way down the canyon, that carried the oil from the property down, that runs down from our gauging tank. In my personal statement dated May 4, 1917, voucher No. 10, the charge of \$6.30 for freight on engine was for an engine we got to use the parts of, excepting the fly-wheel and a bed-plate, to fix up. * * *
BY THE SPECIAL MASTER:

This was to be substituted in place of the other engine which went to pieces.

BY MR. COCHRAN:

We bought the engine from the Edison people.

BY THE SPECIAL MASTER:

The other engine had become unusable. This was to replace it in order to carry on the work. The old engine did not apply upon the purchase of the new one. It is up in the engine house now.

BY MR. COCHRAN:

In my personal statement, November 4, 1917, voucher 30, charge for freight \$2.33, for freight on stuff we were getting up there at that time for replace-

(Testimony of Thomas M. Hornada.)

ment when we were working after the fire. It was from the Oil Well Supply Company. We were getting bills from them along about that time. On my statement December 4, 1917, voucher No. 39, item jitney, two men \$1.50, was for T. M. Hornada, and John Andrew, from Fillmore to the property. On my personal statement, February 4, 1918, voucher No. 46, charge jitney, \$1.00, is for myself. These jitney charges were not always for me. Once in a while I would have to take a man out there with me from Fillmore to the wells. On my statement March 5, 1918, voucher No. 50, charge \$2.50, for two jitney trips, we probably went up twice in the month. On my statement April 4, 1918, voucher 55, the charge, livery \$2.50, was for a team to take me up there at that time for supplies, because they could take me up a little further than a jitney, there being a little more than I could carry. My statement May 5, 1918, voucher 58, livery \$2.50, is for a similar trip. Wherever livery occurs it is the same as jitney charges. Sometimes the jitney would take me only to the Fork and then they would be a mile and a half to walk, and while I could carry sixty or seventy pounds all right, if I had eighty or ninety pounds I could not carry that much, so I would try to get somebody with a team to haul me up. My personal statement, February 5, 1919, voucher No. 71, item \$2.50, said to be for a team to Kentuck, was for the same business. Statement June 5, 1919, voucher No. 76, charge \$2.50 for team, it seems was

(Testimony of Thomas M. Hornada.)

for hauling something out there. I think it was something other than groceries that I took out. It might have been a can of oil or something like that that I got the team to go out for.

BY THE SPECIAL MASTER:

I do not think it was lumber or machinery, probably got something with the wagon, and when I take a wagon up I say, "teaming"; when I say a buggy, it is "livery"; when I say a Ford, it is "jitney." Well No. 2 is off the pump. The station has burned down. There is not anything there since the fire. The Big Sespe Oil Company did not get any production out of it after March 3, 1917. It was not producing since about 1912. Well No. 1 has been closed down since about 1913, and the derrick was used on No. 1 just last winter, a 16x32 feet derrick; that is all the expense from number 1, that derrick; that has—that is all that has been built on No. 1; that is all we worked on No. 1. I have testified pretty completely as to expenses on No. 5 and all the balance of the expenses have been applied on No. 3 and No. 4. No. 3 and No. 4 have produced all the oil produced there for the last five or six years or more. The expenses that have been incurred up to the present time have been substantially for No. 3 and No. 4, except as I have shown they were for No. 1 and No. 5.

BY MR. COCHRAN:

Miller and Hallacher run a machine shop here at the corner of Alameda and Main street, opposite the

(Testimony of Thomas M. Hornada.)

Oil Well Supply Company. On my statement of July 10, 1919, voucher No. 80, charge of \$9.00, was for mill work I had them do for the Foos gas engine that we used to run our pumping plant. Fairbanks-Morse Company run a little place down on Third street, oil well supplies, and different things of that kind. The item on this voucher No. 80, to Fairbanks-Morse Company, 96 cts. covers two springs about six inches long and about one and one-quarter in diameter and four brushes for the magneto and two brush springs for the magneto. On my statement, October 14, 1919, voucher 93, charge \$3.75, to Miller and Hallacher, was for turning down brass bushings, I had put in the main bearing in the Foos engine that we used at the pumping plant. The item of \$6.29, Southwest Welding Company, was for putting in a brass welding that I spoke of that was put in this same boxing that Miller and Hallacher turned out for me afterwards. On my statement November 8, 1919, voucher No. 98, charge of \$4.75, said to be cash for engine repaired, was for the Foos engine that we used at the pumping plant. The Foos engine is the engine we always used at the pumping plant, a twenty horse-power engine. When I say pumping engine I mean the Foos engine, that is, the Foos gas engine. There is a lead running from No. 3 and No. 4 which we are pumping down to this power, what we call the plant. This one engine now runs this plant, that one I spoke of, the Foos engine, that is the one I mean.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

The Foos engine is the one connected with the various devices by which the pumps the wells are operated; in dry times from below the hill, what we call our pumping plant, has the other engine that pumps the water up from the canyon, and there are two other steam engines used in working these wells. In my statement of January 20, voucher 105, charge of \$2.25 to Miller and Hallacher, was for putting in brass bushings in the Governor staff that goes on the Foos engine. Schedule D, December 20, the charge of \$109.40 under date of March 16, 1918, said to be back bills of \$100.00, is made up of voucher No. 39, \$50.00 balance salary, and voucher No. 30, balance on salary. Mr. Clampitt and I made up this schedule E of the account. On schedule E the two derricks at \$350—\$700, are derricks for No. 3 and No. 4. The other items of one derrick \$150, that would be for derrick No. 1. The four-room house listed on the inventory is the house we live in. The two-room house is the house below. It can be a living house. There is gas, water and everything placed in it. The two-room house is forty or fifty feet from the four-room house. There are two houses up near No. 3 and No. 4 wells. We did not erect any other building or structure down at No. 5.

BY THE SPECIAL MASTER:

No. 5 is approximately 300 feet from the two houses which I said were forty or fifty feet apart, and No. 5

(Testimony of Thomas M. Hornada.)

is visible from there. We put the houses right up on top of the derrick—it is so high up.

BY MR. COCHRAN:

Since March 3, 1917, there was taken up on the property several feet of two-inch tubing, the balance of the four thousand feet was on the property on March 3, 1917. There were two calf wheels that were not on the property on March 3, 1917. That item of two calf wheels, of \$125, was not there.

MR. COCHRAN: \$125 each, or \$250.

THE WITNESS (continuing): There were no calf wheels on the derrick on March 3, 1917. Those two calf wheels which I built out of the lumber as I testified were purchased out of this accounting and were the only calf wheels which we did build. We also put in three different working barrels. The three thousand four hundred feet of pipe line was on the property March 3, 1917. The four thousand feet was on the property also. We put three working barrels on there since that date to replace those burned. There were four on the property before the fire. By wells on the schedule I mean holes in the ground. This refers to casing, to what casing was there on March 3, 1917. I have already explained the one derrick and two calf wheels. We put the cables up there since the fire. They were used for pulling wells. One of them was a new one. We bought the cables from the Los Angeles Pipe Company. We didn't buy the crown pulleys. We built new pump jacks. They were destroyed by the fire.

(Testimony of Thomas M. Hornada.)

They were to take the place of those burned in the rigs 3 and 4. These two steam drilling engines were on the property March 1st, also the twenty-five horsepower boiler and the pumping plant. I have testified about the replacement of the Foos gas engine. Replacement and labor on the Foos gas engine cost around \$125. We have three galvanized tanks. These are old tanks that were on the property. The 300 barrel wood tank was on the property, and the 400 barrel wood tank was not there, is the one which I testified we bought second hand and was taken up on the property and was placed at the foot of the hill. That one and one-half horsepower engine was put there since March 3, 1917, being bought from Smith, Booth and Usher, called Hercules engine. That power pump we had to put in to pump water up the hill. We installed that afterwards, after the north of the property went dry. The water line was new. I think the pump was practically new. I could not swear to that; right now. We bought the pump since March 3, 1917, from L. A. Clampitt, and the water line is entirely new since March 3, 1917. It is not a replacement. The rig irons were there. The string tools were there. There have been quite a number of small tools bought since that time. A few of them would appear on my monthly statement. I think we had a bill from the cooperative store. The bunk houses were both on the property on March 3, 1917, also the range. We added a bit of kitchen furniture from time to time. The cots and mattresses were

(Testimony of Thomas M. Hornada.)

there. The pump house and blacksmith shop were there.

BY THE SPECIAL MASTER:

There were two derricks there March 3, 1917, but these are replacements in place of those burned on the 4th of October, 1917. The four wells containing four stumps were there; one derrick \$150, No. 1, and two pump jacks \$25 each were built new.

BY MR. COCHRAN:

The construction of the road, as to which there have been a number of items of expenditure, were started on March 17, 1919, and was completed along—I do not remember the date it was completed now—it was some time the same year. It took about six months, off and on, for six months. We use the road up to the property now. It has to be repaired. It is a new road and some of the rock falls, it does not hold good. There is a new road goes right up the side of a very steep hill and in putting in the footings for the rock walls when our rains come, especially the late rains, they sloughed off a little bit and some of the walls went down the canyon, but outside of that it is all right. Prior to the construction of this road we finally got so we did not have any road. We built the road to better the condition of the approach to the property. I did not say we put in a new pumping plant, I said we put in a water system in the summer during 1919. In August the property had gone entirely dry. We have been getting water from the spring below that hill.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

We were carrying it in buckets, by hand.

BY MR. COCHRAN:

The condition was different there in previous years. This is the first time it ever went dry.

BY THE SPECIAL MASTER:

Item in schedule E, 3,400 feet, 2-inch pipe at 20 cents, total \$680, is merely inventory of its approximate worth at the present time. If you were to go out to buy 2-inch pipe now that is in good condition you could not do it for less than twenty cents per foot. Now, when you are going to buy that, what do you have to do? You have to transport that and put it together again. These four-room houses are not plastered. I made a close estimate of what I could build them for and I do not think I could replace them for one thousand dollars, but of course if I did they would be new.

Q. BY THE SPECIAL MASTER: Mr. Hornada, referring to schedule E attached to the statement of account filed here by the Big Sespe Oil Company, described as inventory and appraisalment of personal property of Big Sespe Oil Company, concerning which you have just been interrogated by counsel for the plaintiff, do the amounts of money shown after the items—the various items listed in that statement—express, in your opinion, the reasonable value at the time of this accounting of the articles named in the list? Now, Mr. Cochran, your objection is renewed?

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: Let the record show that your objection to the question as incompetent, immaterial and irrelevant, is renewed, Mr. Cochran, and that the same is overruled.

MR. COCHRAN: Yes, sir, and exception.

THE SPECIAL MASTER: Read the question to the witness.

(Question read by the reporter.)

A. Yes, sir.

BY MR. COCHRAN:

The Big Sespe Oil Company filed proof of annual labor in 1918 and '19, both years, in the name of the company, and made upon affidavit. I hold 220 shares of stock in the Big Sespe Oil Company. I do not know how many Mr. Clampitt holds, nor Doctor Mills. I have seen this daybook, but not frequently.

BY THE SPECIAL MASTER:

There is a book in which is listed the names of the stockholders of the Big Sespe Oil Company and amount of shares of each, called the "Stock Book." I am the assistant secretary of this company. The secretary has got a book showing a list of stockholders. I do not write up the book. I can testify without looking at the book who the stockholders are, but I can't give you the number of shares each person holds. This book will refresh my recollection so that I can testify.

BY MR. COCHRAN:

This does not give the proper number of shares (producing book).

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

One hundred and twenty shares for Hornada has been changed.

BY MR. COCHRAN:

That was 220. This book is not right so far as the number of shares is concerned. I was never paid \$165 a month, particularly for one month by the Sespe Oil Company. I was paid different amounts at different times with the understanding that I was to be paid \$165 per month. I never received the full amount of \$165 per month. I received part of the additional \$165 per month. That was paid me on back salary. They agreed to give me so much money, starting at a certain time, and when they paid me a certain amount on check, they would mark it on back salary.

BY THE SPECIAL MASTER:

I think that my salary of \$165 commenced in July, 1917. I can't tell how much I received from the company since July, 1917, salary. I have not received as much as \$165 per month altogether. I have received as much as \$100; my average being between \$100 and \$165 per month.

THE SPECIAL MASTER: If anything is not clear from the accounting, Mr. Cochran, as to just what they seek credit for in dollars and cents, and by reason of the salary of Mr. Hornada—

MR. COCHRAN: I am trying to arrive at exactly what credit should be given.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

Referring to the item of unpaid bills, \$600, unpaid me on salary, if I receive that \$600 that will make my salary average up to what we agreed to. We agreed to \$165 for a certain time and then agreed to another stated salary which would make it the regular pumper's wages, which is a little bit less than \$165. I testified this \$165 which was to be paid me monthly was agreed upon between Mr. Clampitt, Doctor Mills and myself, and that it was authorized by resolution of the board of directors of the Big Sespe Oil Company.

Referring to the minute book of Big Sespe Oil Company, which was produced here the other day as such, the resolution of the board of directors at a meeting purported to be held July 2, 1918, is the resolution referred to by me the other day as authorizing this increase in my salary.

(Resolution of the board of directors regarding salary read into the record by Mr. Cochran.)

* * * *

RESOLUTION.

On motion of E. H. Mills, duly seconded by F. Clampitt, resolution was passed and adopted by the vote of all the directors of said corporation, except T. N. Hornada, not voting;

WHEREAS, T. N. Hornada has had charge of the property of this Corporation since the 4th day of March, 1917; and

WHEREAS, during said period the Corporation has suffered loss from fire, and has therefore been unable

to pay said T. N. Hornada a salary commensurate with the services performed; and

WHEREAS, this Corporation is now in position to reimburse said Hornada for services heretofore performed in addition to amounts already paid him, and is in position to pay said T. N. Hornada a salary in proper amount.

Now, therefore, it is hereby resolved and ordered that the President and Secretary of this Company be, and they are hereby authorized and directed to pay the said T. N. Hornada the sum of \$975.00 dollars in addition to the sums heretofore paid him for services rendered for the period ending June 30, 1918, and be it further resolved and ordered that the salary of said T. N. Hornada during the time he shall be in charge of the property of this Company, and until a further order of the Board, shall be the sum of \$165.00 dollars per month.

On motion of E. H. Mills, and duly seconded by F. Clampitt, the following resolution was passed and adopted by the vote of all of the directors of said Company, except director L. A. Clampitt not voting.

WHEREAS, L. A. Clampitt, as President of this Company has rendered valuable services to the Company for many years last past and has received no compensation therefor; and

WHEREAS, this Corporation is now in position to reimburse said L. A. Clampitt for services so rendered; and

WHEREAS, since the sale of the property of this Company under execution, said L. A. Clampitt has

rendered services as President and Manager of the Company from the 4th day of March, 1917, to and including June 30, 1918, for which he has received no remuneration;

Now, therefore, it is hereby resolved and ordered that the President and Secretary of this Company be, and they are hereby authorized to pay to said L. A. Clampitt in full for his services as President and Manager of this Company for the period beginning the 4th day of March, 1917, and ending June 30, 1918, the sum of \$3,000.00 dollars, and be it further resolved that beginning July 1, 1918, and until the further order of this Board, the salary of said L. A. Clampitt, as Manager of this Company be, and the same is hereby fixed at the sum of \$200.00 dollars per month, and the President and Secretary of this Company are hereby authorized and directed to make payment to said L. A. Clampitt in accordance with this resolution.

On motion of E. H. Mills and duly seconded by T. N. Hornada, the following resolution was passed and adopted by the vote of all of the directors of said Company, except I. D. Mills not voting:

WHEREAS, Doctor I. D. Mills has for many years last past acted as Secretary and Treasurer of this Company without compensation; and

WHEREAS since the sale of the property of this Company under execution, and since the 4th day of March, 1917, said Dr. I. D. Mills has without compensation rendered services to this Company as Secretary and Treasurer;

(Testimony of Thomas M. Hornada.)

Now, therefore, it is hereby resolved and ordered that the President and Secretary of this Company be, and they are hereby authorized and directed to pay to said Dr. I. D. Mills in full for his services as Secretary and Treasurer of this Company for the period beginning the 4th day of March, 1917, and ending June 30, 1918, the sum of \$1,500.00 dollars, and be it further resolved and ordered that beginning July 1, 1918, and until the further order of this Board, the salary of said Dr. I. D. Mills, as Secretary and Treasurer of this Company be, and the same is hereby fixed at the sum of \$100.00 dollars, per month, and the President and Secretary of this Company are hereby authorized and directed to make payment to said Dr. I. D. Mills, in accordance with the terms of this resolution.

There being no further business the meeting adjourned.

(Signed) I. D. MILLS,
Secretary.

July 2, 1918.

I testified that that is the resolution under which I was authorized to receive \$165 per month. I received some of the \$975 referred to in that resolution. I cannot tell you just now how much. I did not receive all of it. Payment in schedule D, under date of August 15, 1918, set up as having been paid to me on account of back salary, refers to this \$975. Under date of October 15, 1918, the payment to me of \$33, also on account of back salary, applies to that \$975.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

All that seems to appear here is an item of \$33 and the item of \$88 as being part of the \$975.

MR. COCHRAN: The alleged minutes of the meeting of the Board of Directors of the Big Sespe Oil Company, held December 16, 1918, certified by Doctor Mills, and called to my attention, are the minutes of the meeting of the Board of Directors at that meeting:

"The meeting being called to discuss the resolutions that were passed at the meeting of July 2nd, 1918, allowing back salaries to T. N. Hornada, L. A. Clampitt and Dr. I. D. Mills from June 30, 1917, to June 30, 1918, and fixing amount of salaries for them after July 1, 1918.

After considering the matter it was found to be impractical to pay such salaries with our present income. All parties affected expressing themselves that it will be better for the stockholders to distribute any surplus the Company may have as dividends.

The following resolutions was then offered:

Resolved, that T. N. Hornada receive as back salary \$121 instead of \$975, and that his salary be from July 1, 1918, \$100.00 per month. That L. A. Clampitt receive as back salary \$896.50 instead of \$3,000.00, and that he receive no salary after July 1st, 1918. That Dr. I. D. Mills receive \$830.50 back salary instead of \$1,500.00, and that he receive no salary after July 1st, 1918.

(Testimony of Thomas M. Hornada.)

On motion made by Fannie Clampitt and seconded by Dr. I. D. Mills the above resolution was carried.

On motion made by Dr. I. D. Mills and seconded by Fannie Clampitt it was decided to distribute to the stockholders in December, 1918, thirty cents per share, and it is further ordered that the Company have a dividend every two months distributing such surplus as may be spared, until further orders.

(Signed) DR. I. D. MILLS, *Secy.*"

(The first part of the minutes of the meeting of the Board of Directors of the Big Sespe Oil Company, December 16, 1918, were read into the record by Mr. Robinson as follows:)

"506 American Bank Building, Los Angeles California, December 16, 1918: Big Sespe Oil Company met at a special meeting (specially called meeting) on above date at above named place at 10 a. m. There were present L. A. Clampitt, President; Dr. I. D. Mills, Secretary, and Fannie Clampitt, Director. The minutes of the meeting of July 2, 1918, were read and approved. The secretary stated the object of the meeting. * * *"

BY MR. COCHRAN:

I charge \$165 from July 1, 1918, up to December, 1918. (Witness perusing voucher). It is a fact that both of my vouchers were salary from July, 1918, to December, 1918, both inclusive, were rendered for \$165; that they likewise invariably showed that I only

(Testimony of Thomas M. Hornada.)

received \$100 on account of it and that the \$65 was uniformly deducted. It is also a fact that commencing January, 1919, and down to and including the last statement I rendered the Big Sespe Oil Company, that I did not charge them salary other than \$100; put on each statement, "on account," which I issue every month, from December, 1918, on. I intended to put "on account" on each of these. I do not know whether I did or not but I intended to do it. The year was December, 1918. It is a fact on examining my statement particularly as to my claim for salary that I have charged only \$100 per month during each and every one of the months during that period of time. None of these statements show in any way that this \$100 was in any other wise than in full for the particular month enumerated. This little company had for several years, years ago I worked for them, when they had only as high as one thousand dollars at a time, years ago, they would be shy of money and they would owe me as high as one thousand dollars, before they would pay me in money. Now then, after they decided they did not want to pay these salaries they say to me, "Now, we will make arrangements, we will have a little more money after a while and will give you a pumper's wages." But I was waiting until they got a little bit better along. I was not in need of money and they were just putting it off that way. Now, if I was getting a pumper's salary, I would get—I think I was competent to run an oil property, that is, as far as being a

(Testimony of Thomas M. Hornada.)

pumper is concerned. I could have got a pumper's salary a long time ago, but the price of oil was beginning to go up in 1916 and they said, "after a while we would have more money, you do not need it now, we will have more money after a while." And for that reason I put in a claim for back salary of \$600. That will hardly cover a pumper's salary. Since that time the pumper's salary was raised to \$5 a day.

BY THE SPECIAL MASTER:

A pumper's salary is \$5 a day, \$150 per month.

Adjournment to May 20, 1920, at 10:00 A. M.

SESSION, MAY 20, 1920, 10 O'CLOCK A. M.

(Hearing resumed, pursuant to adjournment.)

PRESENT: Same as before.

THOMAS M. HORNADA, having been previously sworn and examined, resumed the stand and testified further on examination in chief.

EXAMINATION BY MR. COCHRAN:

I have looked into the matter of what bills, or items made by the charge of \$109.40 on December 20, 1917, as appears on schedule D of the account, and found that I made a little error in making up the account. I went over it hurriedly. I was short of time and did not take time to check my figures over. \$50 of this amount I drew on December 20th, is on back salary from the previous vouchers you have there; \$59.40 of that \$109.40 is an amount that they gave me check for money that I advanced in November, 1916. In checking up the accounts I did not check them over

(Testimony of Thomas M. Hornada.)

closely, and I have just got that \$59.40 in there, which should not have been in there.

EXAMINATION BY SPECIAL MASTER:

There should be \$59.40 deducted from that amount; \$50 of that particular check was for back salary that these vouchers there will figure up.

EXAMINATION BY MR. COCHRAN:

The \$59.40 is an error.

BY THE SPECIAL MASTER:

It should be \$50.

BY MR. COCHRAN:

The \$50 which remains of that \$109.40 was on account of some error in salary since March 3, 1917. The balance of that was started really in October, 1917.

BY THE SPECIAL MASTER:

That \$59.40 was money that they gave me a check for at that time, money that I had to pay in November, 1916, and should not go in this statement.

BY MR. COCHRAN:

In regard to saying \$50 was started in October, 1917, the October statement of 1917 was \$105.96. The October statement would be put in for November. You will find that dated some time the forepart of November, but it is for October, \$105.96. In regard to that I received on that payment \$55.96. This \$50 which was unpaid on November 4, 1917, statement, voucher No. 30, is the \$50 which is and should be included in the \$109.40. In regard to the item of payment in schedule

(Testimony of Thomas M. Hornada.)

D of the account, under date of March 15, 1918, for \$100, which is said to be an account for back bills, in regard to my testimony that that included two unpaid balances of \$50 each out of my salary previous to that time, I can give you the figures for four or five months salary and seven payments that will equal that five months salary. Up to and including the statement rendered in October, 1917, all my salary had been paid up to the payments that should have been made for the October settlement of \$105.96. Up to that time we were square. On the November 4, 1917, statement, I was allowing \$50 back salary for October, and that is included in this \$109.40 December payment. The next statement after that was December 4, 1917, voucher 39, and according to this voucher \$50 was unpaid to me on account of that.

STATEMENT BY MR. COCHRAN: Unpaid at the time of the payment of this voucher of December 26, 1917.

BY MR. COCHRAN:

The full amount of one month's salary was paid on February 19, 1918, \$111.95, and was in payment of my next voucher dated December, 1917.

STATEMENT BY MR. COCHRAN: Voucher No. 45.

BY MR. COCHRAN:

That was for December, \$108, and \$3.95 for expense money. That was on the bill rendered the forepart of January, 1917, for the month of December.

(Testimony of Thomas M. Hornada.)

Regarding my next voucher, No. 46, paid February 23, 1917, said to be \$50.00, according to this statement was \$50 left unpaid, the check in payment for it was sent to me, in other words, on this statement for \$103.95 there was still \$50 left unpaid.

STATEMENT BY MR. COCHRAN: That \$103.95 came in on February 4th statement.

BY MR. COCHRAN:

Regarding this February 4th statement, I do not know whether that was for January or December salary. I drew no money in January. On my November, 1917, statement, \$50, there was left unpaid a balance of \$50, item of \$109.40. I received \$53.95 for the month of October, leaving a balance of \$50.

STATEMENT BY SPECIAL MASTER: \$50.96.
EXAMINATION BY MR. COCHRAN:

That was paid in the balance of \$109.40.

In my statement of December, 1917, on account of my November salary, there was \$50 left unpaid. I rendered no statement for salary in January. Regarding the account dated February 19th, 1918, voucher 98, showing a payment to me of \$111.95, supported by voucher No. 45, voucher 45 included my December salary, including the \$8.00. This statement says "December, 1917", and shows salary \$100, and that of course means for December, 1917 salary. That \$108 and \$3 was made out in January for the month of December, making \$111.95 paid to me on February 19, 1918.

(Testimony of Thomas M. Hornada.)

STATEMENT BY SPECIAL MASTER: When you said \$3, you meant \$3.95. Go ahead.

EXAMINATION BY MR. COCHRAN:

Voucher No. 46, dated February 4, 1918, includes salary for the month of January. There was \$200 due me at the end of February, but I received no salary until January. It is not true after the payment of voucher 46, there was still due me \$50 on October, 1917 salary and \$50 on account of my January, 1918 salary. I said I did not receive money at all for January.

BY THE SPECIAL MASTER:

\$3.95 was paid me on account of incidental expenses and that left \$100 unpaid for that month. They only paid me \$3.95 and that was added to the \$108, the bill that was put in in December for the month of January. Really this \$103.95, \$3.00 was taken off of that that really was for the month of December, but it was dated January. I paid the bills the first of the month for the previous month all the time. There was more than \$50 unpaid on account of my January salary at the time the payment was made of the amount on voucher No. 46. I do not figure out just where it comes in on these amounts. I mean there was more than \$50 due on my January salary. At that particular time there was \$100 due me for January. Referring to voucher No. 46 again, I received on January 23, 1918, \$50. That was on account of my January, 1918 salary. I claim that other money than \$50 on

(Testimony of Thomas M. Hornada.)

account of November, 1917, and \$50 on account of January, 1918, was due, after this payment of February 23, 1918. Yesterday I testified that the payment of March 16, 1918 of \$100 was paid on account of back salary. Regarding that \$100 which was paid me I can't figure out just where things stand in regard to this balance of \$50 on October, 1917, and January, 1918, \$50. I have a statement which starts at October and ends in March and my account balances with those payments and those checks there. I rendered a monthly statement to the Big Sespe Oil Company each month subsequent to February, 1918, and each month's statement, the salary for the month previous to when they were rendered was included. I practically made up this account which has been submitted here, and I gathered together all the vouchers which have been submitted in connection with it and among these are regular monthly statements of myself to the Big Sespe Oil Company. Regarding schedule D there is an item under date "March 16, 1918, T. M. Hornada, see back bills, \$100;" that was a payment on account of back salary and balanced up to that date. After that time I proceeded to render from month to month a statement of account of money due for salary and each time I included in the statement what I deemed to be my salary due at that time.

BY MR. COCHRAN:

When the Big Sespe Oil Company went into possession on March 3, 1917, they commenced the sale

(Testimony of Thomas M. Hornada.)

of oil to the Union Oil Company and sold that oil to the Union Oil Company continuously down to and including our oil run in May, 1918, "Commencing with the oil run of June, 1918, and down to and including the present time all the sales have been made to the Turner Oil Company." The oil line of this property ran possibly for a mile to the south to a point known as the Kentuck, to the line of the Kentuck property. From the northerly line of the Kentuck property the oil reached the line of the Union Oil Company when we were selling to them by going to the Kentuck tanks. The oil line of this property did not connect with the Kentuck tanks. There was no connection between the lines of the Sespe property and the Kentuck tank. The oil did not get into the Kentuck tank but went to the Union Oil Company's line first on the Kentuck property, not through the Kentuck tanks. Their lead lines led to their refineries. Connection from our line was made into the Union Oil Company's line right by the Kentuck tank. We had to make some connection when we commenced selling to the Turner Oil Company. The Turner Oil Company ran a pipe line from a line which they had access to and connection to where the Union Oil Company was attached onto our line within a foot of the Kentuck Oil tank, and that pipe line connection which was made when we commenced selling to the Turner Oil Company was made at the entire cost and expense of the Turner Oil Company. We do not claim any item of charge

(Testimony of Thomas M. Hornada.)

in connection with the pipe line connection whatever. The 3400 feet of two-inch pipe line in schedule E is nearly all in actual use on the property. There are a few hundred feet of line that is not in use.

BY THE SPECIAL MASTER:

The 3400 feet of two-inch pipe line was not installed?

BY MR. COCHRAN:

None of it really in storage. There is pipe lying there that has been probably used, and some pipe on the derricks in use. I estimated five hundred or six hundred feet not in use. I estimate 3400 feet pretty closely, counting nearly all the joints. Some of it not in use is joined together and some is not. I didn't count those not joined. Most of that pipe line goes from the Kentuck tank to what we call our gauging tank and then they are the same oil lines that lead from the wells to those tanks. This pipe line is all open to the eye. 3400 feet is a rough estimate. All the 4000 feet of pump tubing is in use except eleven lengths, twenty-foot lengths. The pump tubing is installed in wells Nos. 1, 2, 3 and 4. All the 4000 feet of sucker rods except 180 feet are in use.

BY THE SPECIAL MASTER:

What is in use is in Nos. 1, 2, 3, 4.

BY MR. COCHRAN:

We have four working barrels, one for each well. The two derricks are at wells 3 and 4. When I itemize the four wells I refer to wells No. 1, 2, 3, 4.

(Testimony of Thomas M. Hornada.)

STATEMENT BY THE SPECIAL MASTER: I, myself, am familiar to some extent with these matters. I, myself, have invested in oil companies. I have not only invested in them but I have acted as attorney for them. I know how they are run. I know how the pipes are laid. It seems to me some one should go out and find out just how the pipes are laid. I do not think it has to be all installed. I think he also testified about the 4000 feet of pumping tube; that part of it I believe he said was installed at No. 1 and No. 2.

BY MR. COCHRAN:

At wells. Nos. 2 and 3.

STATEMENT BY THE SPECIAL MASTER: The special master sees what counsel is driving at perfectly. He is attacking that with perfect propriety, the estimate of the expenses to which he testified yesterday in answer to the special master's own questions, for instance, he has to a certain extent destroyed the testimony as to the \$680 already. So this procedure is correct, I can't accept that \$680 item, he testified with reference to. He has testified that five hundred feet of the six hundred feet is not in use and that he did not count it. If that is the case I cannot accept that \$680 item.

STATEMENT BY MR. ROBINSON: We will surely go into it on our side. Mr. Cochran knows about this matter. Possibly the special master is not familiar with these matters, but it is not any more possible for

(Testimony of Thomas M. Hornada.)

you to run an oil well without extra piping and do your drilling then it would be to run an automobile without extra tires which you do not use every day.

THE SPECIAL MASTER: Another question presents itself to my mind. There is estimated here 4000 feet of two-inch pump tubing at 25 cents, making \$1,000, on which it seems I am to hear argument concerning which I have to reflect and study as to whether or not I am to allow credit for material furnished and work rendered on No. 1 and No. 2. Now, I have to digest that matter according to my ability and according to my digestive organs. I think the point is well taken.

BY THE SPECIAL MASTER:

All the cables are in use. There is a cable that runs from No. 3 to the pump plant and there is a cable that runs from No. 4 to the pump plant and there is a cable that we use for pulling wells.

BY MR. COCHRAN:

None of them are in use in connection with wells 1, 2, or 5. Two of the three crown pulleys are in use on No. 3 and one on No. 4.

Q. Have you any crown pulleys on No. 5?

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial, and on the further ground that no claim was made for any crown pulleys.

MR. COCHRAN: I don't know whether there is or not.

(Testimony of Thomas M. Hornada.)

MR. ROBINSON: There are three.

MR. COCHRAN: There are so many items which he hasn't been able to explain, in counting up the materials.

THE SPECIAL MASTER: Sustain the objection.

MR. COCHRAN: Exception.

BY MR. COCHRAN:

The two pump jacks are in use at 3 and 4.

BY MR. ROBINSON:

The two steam engines which are itemized in the schedule are at No. 3 and No. 4.

BY MR. COCHRAN:

Used for pulling wells. We have to do it so we can work them.

BY THE SPECIAL MASTER:

The 25-horse boiler, set up at No. 3.

BY MR. COCHRAN:

It is not in use at the present time. It has been in use. We stopped using it sometime in the early part of 1919. We had been using it up to that time for pulling No. 3 and No. 4. Two of the galvanized and wood tanks, itemized on this schedule, are in use. The rig irons are not in use. Last used before the derrick burned down. We used them between March 3, 1917 and October 4, 1917. October 4, 1917, was the date of the fire. We used them for assisting to pull tubing at No. 3 and No. 4. In a string of tools is generally included stem stamp, bit jars and rope sockets. It is a string of drilling tools. We have not

(Testimony of Thomas M. Hornada.)

used these on the property since March 3, 1917. The Big Sespe originally bought the string of tools before the Pacific Crude Oil Company bought it from the Big Sespe.

L. A. CLAMPITT,

called as a witness by the complainant herein, having been first duly sworn by the special master, was examined by Mr. Cochran in chief, as follows:

I am called, L. A. Clampitt. I am the president of the Big Sespe Oil Company and have been since long before you knew anything about it. The Big Sespe Oil Company was incorporated about twenty-four years ago. The Big Sespe Oil Company was incorporated in California.

BY MR. ROBINSON:

In Los Angeles.

BY MR. COCHRAN:

I am a stockholder in the Big Sespe Oil Company holding 2130 shares, I think. We have the stock book that I can look it up in. We have the list of stocks and everything. Nothing is covered up.

* * * * *

MR. COCHRAN: I object to that. At the adjourned hearing, Mr. Clampitt, will you please produce the stock books or that which contains the stock account of the Big Sespe Oil Company. I don't want any more question about it.

(Here ensued discussion.)

(Testimony of L. A. Clampitt.)

MR. ROBINSON: I do object to it as incompetent, irrelevant and immaterial; but I wish it understood, if I could know the reason why it is wanted, any particular reason. I might possibly waive it, but the matter is all a deep mystery to me too. It is like saying that a man can go into my house, but the law certainly requires that he show good reason for going in. The books are asked for, not to prove the account, but to prove the bias of the witness. Now, we will stipulate that Mr. Hornada owns 220 shares of the capital stock of the corporation. That is correct, is it not, Mr. Clampitt?

A. Yes, sir.

MR. ROBINSON: (Continuing) And that Mr. Clampitt owns something over 2000, and that Dr. Mills owns between eight and nine hundred shares, and that there are two other stockholders who own about 100 shares between them—48 shares between them—two of the stockholders between them own 48—in other words 24 apiece.

THE SPECIAL MASTER: What was that?

MR. ROBINSON: Two of the stockholders own 24 apiece, and then there is Mr. Clampitt who owns—

THE SPECIAL MASTER: And how much is Dr. Mills' holdings?

MR. ROBINSON: 861 shares; two other stockholders own 24 shares apiece, and then there are two other stockholders owning 1 share apiece, they are

(Testimony of L. A. Clampitt.)

merely qualifying stockholders holding those shares as directors.

THE SPECIAL MASTER: You haven't given me Mr. Hornada's holdings yet.

MR. ROBINSON: Mr. Hornada owns 220 shares, and Mr. Clampitt's holdings should be 2229 shares.

THE SPECIAL MASTER: I have that wrong on my note here, then. 2229 for Clampitt?

MR. ROBINSON: Yes. That is the total issue of 3360 shares.

MR. MARTIN: What is the capitalization?

MR. ROBINSON: I thought I would just give that out sort of *ex cathedra* and *ex parte*; these gentlemen may want to know that.

The Witness: 500,000 shares at \$100 a share.

MR. COCHRAN: May I out of the mist, as it were, ask whether or not my question stands?

THE SPECIAL MASTER: To just what question do you allude?

MR. COCHRAN: I called on him to produce the books.

THE SPECIAL MASTER: The Special Master declines to order the production of books.

MR. COCHRAN: Except to the ruling.

BY MR. COCHRAN:

I am not the secretary or bookkeeper. I do not know anything about these bills at all or about this account. The secretary kept track of that and the bookkeeper. All I watched was to see that the bills were paid and that there was nothing against it.

(Testimony of L. A. Clampitt.)

BY MR. COCHRAN:

In relation to page 3 of the original account, which was filed in this matter and which was signed by the Big Sespe Oil Company, a corporation, by L. S. Clampitt, president, is that not your signature?

BY MR. ROBINSON We will stipulate that it is. I am not through with the account until I look it over and see what it is. I do not know what those items of payment to Mr. Kelsey and the National Surety Company were for.

BY THE SPECIAL MASTER:

The reason the bond was given on May 12, 1917, on which \$20 premium was paid to Frank M. Kelsey, was on account of a bond given to Union Oil Company because there was litigation and they would not pay for oil without my giving a bond. It was a surety bond. Giving a bond was not directed by the court. The Union Oil Company asked for the bond on account of litigation. They were not willing to turn over the money for oil unless they were secured against loss.

Hearing adjourned until Friday, May 21, 1920, at 2:30 P. M.

SESSION OF FRIDAY, May 21, 1920, 2:30 P. M.
(Hearing resumed pursuant to adjournment.)

PRESENT: Same as before.

L. A. CLAMPITT,

being previously sworn, resumed his examination in chief.

(Testimony of L. A. Clampitt.)

EXAMINATION BY MR. COCHRAN:

When I say that the bond given by Union Oil Company by Sespe Oil Company, was on account of litigation, I did not refer to this suit, for which this accounting is had. The suit I meant was the suit first started in the Superior Court of Ventura County. It started in Ventura when you notified the Union Oil Company not to pay us any money. The suit I mean was when it first started; that is the only time we ever gave any bond. The bond was given by our company after the purchase of this real property on March 3, 1917, after we had taken the property back.

BY THE SPECIAL MASTER (Statement): I will make a note of it here as the suit of the Big Sespe Oil Company against the Pacific Crude Oil Company.

BY MR. COCHRAN:

Yes, sir. After the Big Sespe Oil Company bought in this property they sold some oil to the Union Oil Company. After July 1st, 1917, when we commenced to produce a little oil again, we wanted to sell the Union Oil Company and they would not pay any money what was due us without a bond being put up to indemnify them against any claim. It was not that they would not buy any oil from us. They kept taking the oil.

STATEMENT BY SPECIAL MASTER: I will take notice of the fact, Mr. Cochran, that the bond was given, because of the fact that the Union Oil Com-

(Testimony of L. A. Clampitt.)

pany did not feel that they were getting title to the oil.

STATEMENT BY MR. COCHRAN: Yes sir, I think that is so.

EXAMINATION BY MR. COCHRAN:

The five items to California National Bank which the account says were interest, as to which there are no vouchers submitted, was interest on a loan to the Big Sespe Oil Company from California National Bank—only one loan. I do not remember when the loan was made, nor the amount.

MR. ROBINSON: If you show him the cash book and entries I think it will be very easy to ascertain by looking at the cash book just what moneys were borrowed to operate the property.

THE SPECIAL MASTER: This presents a rather anomalous situation. You may lead the witness. I will permit you to lead the witness, put leading questions in order to ascertain whether there was a loan of so much money. I think you should be entitled to be permitted to ask leading questions, Mr. Cochran, unless they are objected to by the special master or opposing counsel. I think it would be a good plan to follow that procedure here, gentlemen. In fact I think you are entitled to have me say to you and I am going to say to you now—I am beginning to see just what we referred to before as the mystery in the case. It does not seem that I have solved the problem by any means yet, gentlemen, but I have at least what I will

(Testimony of L. A. Clampitt.)

call a working hypothesis. I think the complainant's theory is that perhaps the Big Sespe Oil Company in operating the property during the time they had it, incurred expenses which were not necessary simply to produce the oil which they produced, and which according to the complainant's contention belonged to him, or the proceeds, but they operated it with a view to the not far distant future. In other words they bought pipe which was not necessary for immediate production, and possibly they may contend that there was a waste and recklessness in the expenditures, and I have been seeking for this theory all the way through. I think it is my duty to tell you, I see that. I think your questions all go to confirm that theory. In other words, that you are going to contend that these expenditures were not made purely for the production of oil but they were expenditures incurred and made for the benefit of anybody that might own the property in the far distant future, perhaps. I am called to ask the witness certain questions myself.

BY MR. COCHRAN: I think Your Honor has been very patient, and as I think you said the other day, I think Mr. Robinson has been too. I want to say here, that it has been rather annoying to me to be compelled to take up every item as I have done, but I have done it on the theory that we are entitled to know what each item was paid out for, so that when the record is complete we can separate them and thus be able to see what they will be liable for and what they will not be liable for.

(Testimony of L. A. Clampitt.)

STATEMENT BY MR. COCHRAN: I have never questioned the amount of payment, but when I have seemed to have questioned it, I have been correct. The others, I have assumed it to be correct.

(Witness continues.) I suppose the entry in this book which is marked "Complainant's Exhibit 1 for identification", on page 2, under date of March 12, 1917, "borrowed from California National Bank one thousand dollars", is one of the loans made from the California National Bank on which this interest item was paid. I do not know that that is the one thousand dollars that the interest was paid on. Doctor Mills made the loan at the bank. In Schedule D of this account, the item appears to be for interest, on August 1st, 1917, \$7.00, Farmers & Merchants National Bank, was interest on a loan also. I do not know anything about that loan personally. I suppose the secretary does—Doctor Mills and Doctor Hornada, if Mr. Hornada was acting secretary then. Mr. Mills and I negotiated the loan back in 1917. I suppose the entry in Complainant's Exhibit 1 for identification, under date of May 4th, 1917, "Borrowed from Farmers & Merchants National Bank \$1450.00" is the loan from Farmers & Merchants National Bank on which interest payment was paid. I do not know positively. Whoever paid it knows, I suppose. Doctor Mills was treasurer. I know the character of some of the charges on Schedule B for taxes. In regard for item in Schedule B of the account under date of February

(Testimony of L. A. Clampitt.)

19, 1918, payment to Secretary of State, \$85, the voucher which I have here was given in payment for that, being receipted February 21, I suppose.

BY MR. COCHRAN:

This is a receipt from the Secretary of State dated February 21, 1918, for \$85, including \$10 penalty said to be received for corporation license tax and penalty for year commencing December 31, 1918, and the bill is to the Big Sespe Oil Company. I would like to have that bill marked in evidence. (Bill received in evidence)

THE SPECIAL MASTER: I will mark it "License tax and penalty."

BY MR. MARTIN: In the year, 1917, I understand it, for the Big Sespe Oil Company.

THE SPECIAL MASTER: Paid by the defendant company.

MR. COCHRAN: Yes, sir. Amongst the vouchers submitted is receipt covering item of April 17, 1918, T. W. McGlinkey, county taxes, \$150.03. Will it be conceded that this receipt which I hold in my hand is a receipt for the payment?

MR. ROBINSON: Yes. For the fiscal year 1917 and '18, and shows tax on real and personal property involved in this suit, \$138.18; 15 per cent penalty, \$11.85, making a total of \$150.03. I offer the receipt in evidence.

THE SPECIAL MASTER: It will go in as Complainant's Exhibit No. 4.

(Testimony of L. A. Clampitt.)

BY MR. COCHRAN:

I suppose the item of payment in Schedule B, payment under date of November 23, 1918, T. W. McGlinkey, said to be for county taxes in the sum of \$151.20, in regard to which there is no voucher, was in payment of taxes. I do not know which particular taxes this was for. I did not pay the taxes. Regarding item of payment to John P. Carter, taxes, \$39.32, in regard to which there is no voucher, at one time Doctor Mills and I went to Ventura to straighten the taxes up. They had them appraised too high and he gave his personal check and paid it right there. I do not know whether John P. Carter is collector of internal revenue in Los Angeles. I do not actually know what this item is for.

MR. COCHRAN: I ask that the book which was identified by Mr. Hornada as the day book and ledger of the Big Sespe Oil Company about which he and Mr. Clampitt have been examined, be marked Complainant's Exhibit 5 for identification.

THE SPECIAL MASTER: It will be marked as Complainant's Exhibit 5 for identification.

MR. COCHRAN: In Schedule B dated November 10, 1919, there is an item of payment to George J. Little, county taxes, \$156.66, and amongst the vouchers I find a receipt from George J. Little for state and county Ventura taxes for the fiscal year 1919 to 1920 for real and personal property involved in this suit, which is stamped "Paid November 12,

(Testimony of L. A. Clampitt.)

1919." If there is no objection to that being a receipt for that payment I will offer it in evidence.

MR. ROBINSON: No objection.

THE SPECIAL MASTER: It is received in evidence and marked Complainant's Exhibit No. 6, in Case E No. 26. As I understand it this is a state and county tax receipt.

MR. COCHRAN: In Schedule B, under date of August 8, 1919, there is an item of payment, John P. Carter, \$27.00. Among the vouchers which have been submitted with the account I find a receipt from John P. Carter, collector of internal revenue, dated August 9, 1919, and if there is no question about this being a receipt for the item, payment of which I have just referred to—

MR. ROBINSON: We will stipulate John P. Carter is what he purports to be on the receipt, collector of internal revenue.

MR. COCHRAN: It says for additional capital stock tax.

THE SPECIAL MASTER: Very well, I will call it that on my notes. How much is the amount?

MR. COCHRAN: \$27.00. I am doing that so that if they ever go up on appeal they will not have to print every one of these.

THE SPECIAL MASTER: It is understood that the seven exhibits that have been offered in evidence, 1, 2 and 5, are for identification, and the other exhibits 3, 4, 6 and 7, have been received directly in evidence.

(Testimony of L. A. Clampitt.)

BY MR. COCHRAN:

Regarding the three other items of payment to John P. Carter in Schedule B, said to be for taxes, with which there are no vouchers, I do not know what particular taxes those are. The payment in Schedule B, said to be for back taxes, \$284.94, without voucher in connection therewith, was made for taxes, but I can't tell any further details about it. The item of payment to me in Schedule D of the account under date of October 15, 1918, of \$244.50, said to be for back salary, is back salary as manager and president, both.

STATEMENT BY MR. COCHRAN: Whatever salary was paid to you as an officer of the company was paid to you by resolution of the board of directors, July 2, 1918, was it not? Isn't that the resolution under which any back salary was allowed you?

MR. ROBINSON: Well, I think that is objectionable. I will object to it as calling for the conclusion of the witness, not the best evidence. He was paid the money and there was a resolution authorizing the payment of the money. But there are two theories upon which, when we reach our part of the case, salaries can be paid, and courts all recognize these two theories. One is the theory of express contract, and one is the theory of *quantum meruit*.

THE SPECIAL MASTER: Your theory is that you will be bound to the answer here, to the effect that this salary was paid to him only by reason of this resolution.

(Testimony of L. A. Clampitt.)

MR. ROBINSON: I do not want his conclusion.

THE SPECIAL MASTER: I think you need not fear that if he says this was the resolution under which that was paid him; also on another theory, that is *quantum meruit*; you can present it that way. You may answer the question, Mr. Clampitt.

THE WITNESS: I can't answer it by just saying "yes" or "no."

BY MR. COCHRAN:

I am familiar with most of the resolutions. I am not clear just on the dates and everything. We had a meeting and then we agreed what was to be done, what had to be done and then Doctor Mills would write up the meeting and it would be approved at the next meeting. We had a meeting and made a resolution that we be paid back salary. I suppose, reading that resolution, that was a resolution passed at the meeting at which it was determined that we should have back salary, so I think. I know there was a meeting and a resolution was passed.

MR. COCHRAN: I would like to have this resolution identified as being the same one, when it was read in evidence on the examination of Mr. Hornada.

BY THE SPECIAL MASTER: It will be so deemed.

BY MR. COCHRAN:

I remember the resolution; it was the same date, July 2, 1918. I suppose the item of payment in Schedule D, under date of August 15, 1918, \$652, said

(Testimony of L. A. Clampitt.)

to be for back salary, was paid me under the same resolution of July 2, 1918. I have been president of the company ever since 1910. I received salary prior to this payment of August 15, 1918, of which I have testified. I do not recollect what year. I suppose I got that salary as long as the company had any money. I can't tell when it was, nor the amount, nor for how long it lasted. Regarding item of \$96 in Schedule D, under the head "Unpaid bills," which is said to be for bill as to which there is not any statement on file, that \$96 was for money I advanced several times for different things. I might have paid some man for some work or something. I have not the items which go to make up that \$96. I do not know that it amounts to \$96. I do not know whether \$96 is correct or what made up the items. It might have been for trucking, for a truck or team, loading, or something.

BY THE SPECIAL MASTER:

Regarding the credit of \$96 to me, if I put that on paper, I probably turned in a receipt, or otherwise lots of times I would be out of money. He did not ask me what it was for—so much expense. I suppose there was some data from which said \$96 was paid on there, but I do not know what it is. I do not remember now what the \$96 was for or how it was made up. It might be on my books in the office, I do not know.

THE SPECIAL MASTER: I was about to suggest that I have many ideas about these different ramifications, but I shall want to hear argument in order to

(Testimony of L. A. Clampitt.)

reinforce my present ideas on the matter. As an illustration of what I am thinking, for instance, take these taxes and penalties. Of course I think whoever is the owner of the property will have to stand for the ordinary taxation, but I have grave doubts whether they will stand for penalties. This money advanced by Mr. Clampitt, that is his province. It is not merely a question of what Mr. Clampitt advanced, but it is a question of what it was spent for after they got it; that is, the mere fact that Mr. Clampitt advanced money to this company is not the best reason—it is what they spent it for finally.

Very well, gentlemen, I will adjourn this over until Thursday, the 27th of May, at 10:30 o'clock a. m.

(Hearing adjourned to the 27th of May, at 10:30 a. m.)

(On the 27th of May, 1920, the further hearing of this matter was continued to Wednesday, June 2nd, 1920, at the hour of 10 o'clock a. m.)

WEDNESDAY, June 2nd, 1920, 10 o'clock a. m.)

(Hearing resumed, pursuant to adjournment.)

PRESENT: Same as before.

L. A. HORNADA, previously sworn, resumed the stand and further testified in chief as follows:

BY MR. COCHRAN:

At the present time I have no vouchers or statements to support the payment for \$284.94 listed on Schedule B of the account, noted as being for back taxes, but

(Testimony of Thomas M. Hornada.)

without any date of payment. I have sent for them. I am not familiar with the loans which Mr. Clampitt said were made from the California National Bank and the Farmers & Merchants National Bank, under which various items of interest appeared to be paid according to Schedule B of the account. I know they got a loan at two different times. I do not know any of the details so as to be able to testify as to the source of this account, as to dates or what was paid, or anything of that kind. I think these loans would show in the check stub book which was kept by Doctor Mills as secretary and treasurer. We have sent for the duplicates of the vouchers to items of payments in Schedule B of the account, dated November 23, 1918, to T. W. McGlinkey, \$151.20, said to be for county taxes. I think you will find vouchers filed with the account to cover the three items of payment said to be to John P. Carter, taxes, one on May 28, 1919, for \$39.32, another February 23, 1920, \$28.00, and a third under date of February 23, 1920, \$267.87. (Vouchers were handed to the witness.) I do not seem to find them in that bunch of vouchers. John P. Carter is the collector of internal revenue of this district. Regarding what these taxes were paid to Mr. Carter for, there is a special stock tax. I will endeavor before the next meeting to procure duplicate receipts for those. I purchased the lumber used in the erection of the derrick at No. 5 well, of Curran Brothers, Fillmore. I purchased the lumber that was used in the erection of the derrick at No. 1

(Testimony of Thomas M. Hornada.)

well from Curran Brothers. We paid Curran for the lumber. There is a charge made in this account for that payment, the last item in Schedule C, item of November 21, 1919, \$703.32. All the lumber purchased from Curran Brothers in that item was used for these two derricks. I do not remember testifying that none of the lumber which had been purchased from Curran Brothers in that item of payment had been used, that that was all still lying on the property.

Mr. Cochran (statement): It was all used on both.

(Witness continues): I do not remember testifying that this lumber was still lying unused on the property. That is not the fact. There is something wrong about the way it has been copied. The lumber we got from Curran Brothers was used in the derrick of No. 5 and the little derrick of No. 1, and all went into the derrick, with the exception of what pieces would be left, naturally, in building. Now, the engine has not been set up yet. There is the sills and the engine block that is lying there, and there are a few odd pieces lying around close to No. 5, but outside of that the lumber has all been put on No. 5 and No. 1. We have not built the pump house and the engine house. So far, all the lumber that was used on No. 5 was put into the derrick and the rig, what we call the "drilling rig." The drilling rig consists of four mud sills. One main sill, the jack post, the post it takes to hold the sand wheel and braces that goes into the timber to hold them. We started the construction of No. 5 in the latter part of 1919. Regard-

(Testimony of Thomas M. Hornada.)

ing the bill of Curran Brothers dated November 21, 1919, we had not started construction before that lumber arrived on the property. That derrick was started about November, 1919,, after the lumber was hauled up there. The derrick on No. 1 was built some time the fore part of December, 1919. I can't tell this morning. I do not know how long it took to construct No. 5 derrick—several days; it was not a month—it might have been a week.

EXAMINATION BY SPECIAL MASTER:

By "several" it would be fair to say seven or eight days?

BY MR. COCHRAN:

They put in about thirty days on No. 5 and No. 1 derricks and rigs.

EXAMINATION BY SPECIAL MASTER:

We used the larger amount of lumber in No. 5. I guess it would be easily three-quarters at No. 5. It was just a derrick at No. 1. It is a 16x32 derrick. As near as I can guess it, three-quarters of the cost of that \$703.32 went into No. 5, and the balance into No. 1. I testified that prior to 1919, and even at the present time this property was obtaining water from the canyon to the north, and prior to the summer of 1919, that supply of water never failed us on the property. All the petroleum or oil which was purchased from this property since March 3, 1917, was sold either to the Union Oil Company, or to the Turner Oil Company. Some of it was used on the property for repairing those two

(Testimony of Thomas M. Hornada.)

wells, after the fire. We used some petroleum for steam. I think we used petroleum for steam about a week in pulling those wells, No. 3 and No. 4, after the fire. We did not use any of the produced petroleum for any other purpose. With the exception of what was used for fuel within this one week at wells 3 and 4, all the petroleum used at this property was sold to either the Union or Turner Oil Company. One week we may have fired up occasionally at different times to do a little work on the well. I guess we used twenty or twenty-five barrels at the most for steam. The lumber of the four derricks was destroyed by fire of October 4, 1917. The lumber in rigs at No. 3 and 4, some bailers and some things about the rig, for instance, the brake bands on the bull wheel—there were other things lost, but I have not got a memorandum. There were two thousand feet of $\frac{7}{8}$ ths cable that was an entire loss—new cable. There were about sixteen hundred feet of sand line that was a total loss. I would have to take an inventory of it. Nothing else that I can recall at this time. There were no rigs at No. 1 and No. 2 wells; there was none at all at No. 1. There was just a walking beam and a Sampson post up in No. 2 that we used just a few times for pumping purposes, but it was not a complete rig. They were burned. The cable which was burned in use on the property at the time of the fire was used on the bull wheel. It had been there for some time at No. 4, and the sand line was used at No. 4. There was no cable at No. 3, except

(Testimony of Thomas M. Hornada.)

two hundred feet, a piece that we used for pulling the well.

Q. BY SPECIAL MASTER: The bull wheel must have been at No. 4, too?

A. Well, there is a bull wheel at both wells. There were two brake bands destroyed by the fire at No. 3 and No. 4.

Q. BY MR. COCHRAN: There was no rig at No. 1 and No. 2; derricks at No. 1 and No. 2, but no rigs.

SPECIAL MASTER: Yes, I believe that is what he said.

THE WITNESS: We did not replace the cable which I think was burned at No. 4, nor the sand line.

In Schedule E of the account the item "Cables, \$200 were cables we had to purchase to use on the derricks after the fire. The other cables were burned so that they were of no value and could not be used. I think we did replace some cables. We did not replace that two thousand feet of cable. This item of \$200 is cables we purchased after the fire, from L. A. Clampitt. I think they are charged in this account. Voucher No. 59 which purports to be an unreceipted bill made out to Big Sespe Oil Company, L. A. Clampitt, June 1, 1919, "For one piece of cable for pulling wells, \$150" refers to one of the cables which I say I purchased from Mr. Clampitt. It appears "Cables" in Schedule E of the account. I do not see or find any other charge in here from L. A. Clampitt or any other charge for cable. (Examining schedule.) Since March 3, 1917, I have

(Testimony of Thomas M. Hornada.)

paid my own jitney or livery fare without making any charges for it. I have never been asked all the questions that might be asked about all the cable that was up there. We have some cable there that did not burn in the fire.

Q. BY THE SPECIAL MASTER: What is the value of the cable that was there prior to March 3rd, 1917, and is there still? The cable that was there prior to March 3rd, 1917 is still there?

MR. COCHRAN: We object to any questions, even if they do come from the Special Master, relative to the value of any personal property involved in this suit. We haven't asked anything as to values.

THE SPECIAL MASTER: I do not know how much responsibility is cast upon the Special Master in making this accounting, but the Special Master suggests that he does not feel that he is expected to go over all this testimony without counsel's assistance, in an endeavor to unravel all the issues himself without help. But, assuming the Special Master is, he is privileged to ask all questions about every item in this account. The account is here, and you are interrogating this witness about it, and that opens the door, I think. I have a note here of \$200 worth of cable, and you show figures which indicate only \$150, and then you ask him whether that is all. Now, Mr. Cochran, you certainly opened the door for the Special Master to ask him how he accounts for the item being \$150. So I will overrule your objection.

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: Exception.

THE SPECIAL MASTER: Note counsel's exception, Mr. Reporter.

MR. COCHRAN: Yes, note the exception.

THE SPECIAL MASTER: You may have your exception; save your point.

MR. COCHRAN: Yes, sir.

Q. BY THE SPECIAL MASTER: How do you account for the other \$50 not shown by voucher 59? Do I understand you to say that the other \$150 accounted for cables on there prior to March 3rd, and are still there?

A. We have some cable there that did not burn, the lead line that did not burn, and those are in good condition now.

EXAMINATION BY MR. COCHRAN:

I am not able to tell just how many trips I made from the property in any one month since March, 1917, nor how long a time I was away from the property. At times when I was away from the property there would be somebody in charge there, and sometimes there would not be. I do not know how often since March 3, 1917, I ever left anyone in charge of the property during my absence, nor how many times. I would leave whoever happened to be working on the place. Sometimes I would have one man, and sometimes I would have two men, and Mr. James McDonald was one of the men who would be in charge there while I would be gone, and I left one man by the name of Lile In-

(Testimony of Thomas M. Hornada.)

galls, and different ones. They nearly always did some pumping. McDonald quit in July. I think probably Lile Ingalls quit in July. According to voucher Mr. Lile Ingalls got his last check on June 16, 1919. It is also true that James McDonald received his last check July 28th, 1919. We kept records of the pumping on the property. The run tickets are the only tickets I ever kept. I did not always make the ordinary repairs around the property and plant. The only time that I had help in making repairs around the property or the plant was when the work was too heavy for one man. I did not keep any record of how many days, or when the wells were on or off the pump. I kept no record as to when I was away from the property. I have no way of telling on what days I was away from the property.

BY THE SPECIAL MASTER:

Summary of oil runs as made to Union Oil Company and Turner Oil Company as consolidated from the run ticket, and statement of Union Oil Company as lodged with the master is received as Plaintiff's Exhibit No. 8.

BY MR. COCHRAN:

Item in my statement of May 4th, 1917, "To freight on engine, \$6.30" refers to engine that we bought to take the place of the one that we had there. No, not the gas engine, that is the one that we had at the pumping plant. This is a twenty horsepower Foos, that we used in the engine house; that is the gas engine that took the place of the old gas engine. We bought the

(Testimony of Thomas M. Hornada.)

Foos engine from the Edison Company. I do not really believe that has been charged in the account. You have a bill there on one of those exhibits. The bill would be from the Edison Company. It was paid by L. A. Clampitt, and the engine was shipped in my name to Fillmore. It took the place of the old one in the pump plant proper. The other one is still there in the engine house. As was asked me the other day—There were dividends paid by the Big Sespe Oil Company to its stockholders twice since March 3, 1917. By reference to the day book, which has been marked Exhibit 5 for identification, on December 3, 1918, dividend which was the first one subsequent to March 3, 1918, and we have the next dividend on February 11, 1919. I kept no record as to when any of the wells were on or off the pump. No. 4 well is not pumping now. We have not been able to determine why it went off the pump at that time. The trouble might be in the working barrel, or it might be in the plunger, or it might be in the tubing. I have made no examination to find out about that. It went off some little time back. It must have been in March. It went off for some reason I can't explain. We have had trouble with No. 3 since we started pumping after the fire on January 3, 1918, just ordinary trouble. We had to pull it. I had help when we pulled it. We figured just in pulling a well when we had that trouble. We figure just one day's work, and then we have been two or three days on a well, including No. 3, before we got it fixed up, but that is only

(Testimony of Thomas M. Hornada.)

once in a while. Since the fire, No. 3 has been working, only we have been working on it at different times. By that I mean pulling it and repairing it. No. 4 has given us more bother than No. 3. We have had more or less trouble with working barrels on No. 4, the plunger sticking, pulling the rod in two, trouble in different ways. I can't tell the trouble each time, but it causes more or less trouble. And one time in particular we had a cracked working barrel that we had to replace. Another time in particular that I remember of, we had a hole in the tubing close to the working barrel that had to be replaced, and I have replaced leather caps on the plunger several times. One time No. 4 was off three or four weeks, if I remember right. We had trouble at that time. We had to pull the well with a team, and we had trouble getting a team; then we had some trouble getting some repairs for it that we had to have. The time was really taken up in waiting for these repairs, rather than in actual working on the well. I do not remember when that particular time was now. It was since the fire. There has been trouble during 1920. I do not know, I kind of think there was in 1919. This trouble on No. 4 was several months after it went back on the pump, January 7, 1918. By "several" I mean seven or eight. Outside of this one particular occasion, what ever repairs I did to No. 4 were just ordinary well repairs when a well goes off, such as fixing up the pump. I can't state how many times it was off. Outside of the one particular occasion, when I say

(Testimony of Thomas M. Hornada.)

a long time was taken to make repairs, you could average it for every time it was off I think, at two days. I can't say how many times it has been off.

THE SPECIAL MASTER: We will take a recess until two o'clock.

HEARING OF WEDNESDAY, June 2nd, 1920,
TWO o'clock P. M.

(Hearing resumed, pursuant to recess.)

PRESENT: Same as before.

T. M. HORNADA, previously sworn, resumed the stand and was further examined in chief as follows:

EXAMINATION BY MR. COCHRAN:

I can bring in for March and April the statement in detail of the runs which has been made by the Big Sespe Oil Company since the last one accounted for in the account, Schedule A which includes February 17, 1920. We have not got the run ticket for May yet. I can bring in the other one, but not the one for May. The oil which was sold to the Turner Oil Company was sold under a written agreement, made in the spring of 1918, I do not remember the date. We have been selling under that agreement since that time, since June, 1918. I have no copy of the agreement, nor is the price of oil mentioned therein. It provides that we shall have a certain price above the market price at the time the oil is run, the day the oil is run. They are supposed to take the market price of the Standard Oil Company. I can't say whether the Standard Oil Company fix any price for oil in Ventura County. I do not

(Testimony of Thomas M. Hornada.)

know that the published price list of the Standard Oil Company expressly excludes Ventura County. The market price of crude petroleum fluctuated since June, 1918. It has increased over the price that was paid in 1918. I could not tell you the percentage of increase. We would receive a certain amount over and above the market price. That was so much per barrel—ten cents per barrel. It was generally understood that we would take the Standard Oil Company's prices. The Turner Oil Company got those prices. I didn't get any prices at all. We accepted their statement as to the prices.

THE SPECIAL MASTER: Who was that?

MR. COCHRAN: He said he accepted the Turner Oil Company's figures as to the price.

MR. ROBINSON: I object to that as irrelevant and incompetent. We received certain amounts of money. The testimony is that we were to receive payments on a certain basis and we did receive them and took it for granted that they were correct. Now, if we are going on piling the record up with a lot of stuff, the contract, and the details of what that contract provides, and then if we are going to get all the details of the Standard Oil Company and compare them with the prices given by the Turner Oil Company it could only prove, if it would tend to prove anything, either that the Turner Oil Company paid us what was due under the contract or did not pay us.

THE SPECIAL MASTER: What is the point?

(Testimony of Thomas M. Hornada.)

MR. ROBINSON: As far as this inquiry is concerned I understand the theory of the case is absolutely untenable anyway, but if we are to pursue the theory of the case it is that we have to account for every dollar of expenditure, certainly we haven't to account for moneys we did not collect. We show that we did collect this money from the Turner Oil Company.

MR. COCHRAN: We certainly are not precluded in showing they might have collected more with due diligence.

THE SPECIAL MASTER: You might have said "fraud"; if you could show fraud, in other words, if they obtained less for the oil than an ordinary prudent business man could have obtained and the methods were neither proper nor diligent, that is another point, but it seems to me that this method of examination and that sort of evidence is rather remote, but I take it that you are entitled to it, Mr. Cochran. I think it goes to the weight.

(Here ensued further argument.)

THE SPECIAL MASTER: Now, I am prone to let Mr. Cochran take more time since he is paying for the record. If there is a mystery I want to see it evolved.

MR. COCHRAN: I repeat, it is not a theory. It is a fact.

THE SPECIAL MASTER: What is your theory?

MR. COCHRAN: As I say, if Your Honor please, I have no theory. I am going to get the facts.

(Here ensued considerable discussion expunged from the record.)

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: We will reserve further questions. Your Honor, as far as the examination of the various items of this account is concerned, I think we have about reached a stopping point. It is quite apparent that we are unable with this witness, at least, to obtain any further enlightenment about any items about which he has been asked. I do not say that about him with any idea of unfairness. We have asked that he get the books and vouchers and examine them and be here at the next hearing, so that we can go ahead and close it up, for we would like to reserve that right for the next hearing. It is also quite apparent that in an accounting like this it is impossible for any one to follow all the items in detail.

(Here ensued considerable more discussion contained in the reporter's notes but expunged from the record.)

MR. COCHRAN: When this accounting, or rather, proceeding, was commenced before Your Honor, some suggestion was made as to the complainant taking exceptions or making objections to various items. At that time we stated on behalf of the complainant that it wasn't possible for us to frame objections or exceptions to any of those particular items, inasmuch as the account itself and all the various vouchers, papers, which have been submitted in connection with it, give no details on which exceptions and objections can be intelligently framed—

THE SPECIAL MASTER: Until you do examine the witness.

(Testimony of Thomas M. Hornada.)

MR. COCHRAN:—to know what the facts were. We also assured Your Honor that when we had advanced far enough with the officers of the company as to the accounts presented, we would endeavor to present to Your Honor some exception or objection to the items of the account. Now, as I say, we did not include Mr. Hornada's examination. I think in fairness to the court it is up to us to say that we are in a position at this time to state our exceptions and objections to the items of this account and I would like very much to do so. In stating these exceptions or objections, I am sure Your Honor will appreciate that without the minutes of the proceedings before us it would be impossible for us to accurately pick out each particular item of the account to which the complainant excepts; therefore the exception and the objection which I will now present will very largely be one of inclusion of what there will be no question about, and the general statement as to the other and the ground for our objection and leaving us to pick out in detail the items included in such exception and objection on which we can later agree.

Taking up the account as presented, the complainant in the first place excepts to the general theory on which this account is drawn and as set forth in what you might call the "summary statement," and preceding Schedule "A," and particularly to the theory that the plaintiff would be entitled simply to a royalty on the oil produced by the defendant company from the property.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: You except to the theory that the complainant would be entitled to a royalty?

MR. COCHRAN: Only. The account says, "Said defendant presents as part of its account the fact that the owner of the realty upon which operations for the production of oil are conducted, is customarily paid one-sixth royalty of the gross production after deducting therefrom all gas and oil used in operation of the leased premises." We say that is a wrong theory in this case and we except to that theory being applied. It is stated on page 2, right after the figures. The plaintiff also excepts to the claim of the defendant company that they should be allowed as claimed in this "summary statement" \$773.01 as and for a payment to the said corporation for its management of said property on the ground that the defendant company is not entitled to any compensation for its management or operation of the property; also objects to the charge under the heading of "disbursements" in this "summary statement" of \$3,958.19, or any part thereof, as and for interest on the value of the equipment or personal property as set forth in Schedule "E," on the ground that they are not entitled to any interest whatever on such personal property.

And the complainant also excepts to the statement of the defendant company as to the amount which the defendant company states it has received and collected as profits from and on account of said realty and as set forth in said "summary statement."

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: Do you object to the general theory? You did not define that any further.

MR. COCHRAN: That we are entitled only to a royalty?

THE SPECIAL MASTER: Does that exception include the one-sixth?

MR. COCHRAN: Yes, sir.

THE SPECIAL MASTER: The general theory of royalty one-sixth. That is one objection?

MR. COCHRAN: I might say we object to that royalty of one-sixth or any royalty on that general theory.

We except to Schedule "A" which purports to be a statement of the receipts of the Big Sespe Oil Company of the oil runs from this property and our objection is not that the defendant company did not receive the money set forth in this schedule, but the plaintiff complains that the complainant is entitled to receive not only all rents and profits which the defendant company actually did receive from the operation of this real property, but also all that might have been received and collected from it if it had been operated with due diligence and propriety. We, therefore, say as to Schedule "A," that that is not a true and legal representation of the account to which this company is liable to be charged.

MR. ROBINSON: Now, pardon me, counsel makes an objection here—he says they object to Schedule "A" on the ground that complainant is entitled to receive all

(Testimony of Thomas M. Hornada.)

the rents and profits. Now Schedule "A" is not a schedule of rents and profits. It is a schedule of gross receipts. Does counsel mean by that—

MR. COCHRAN: What?

MR. ROBINSON: Will there be any specific point made here as to what difference there is?

THE SPECIAL MASTER: Yes, I think I understand counsel. He says you are not entitled to what you actually received but what you might have received if you proceeded more diligently.

MR. ROBINSON: That is a theory to be taken into consideration later.

THE SPECIAL MASTER: You must know that I am listening.

MR. ROBINSON: I was listening, too, but on that objection, you could find we collected \$21,531.68.

MR. COCHRAN: I said we did not except to these figures as the correct amount you did receive, but we say that is not all that you are liable for.

MR. ROBINSON: Is there going to be any more statement as to how much more we are liable for?

THE SPECIAL MASTER: I think the burden would rest upon Mr. Cochran to show that.

MR. ROBINSON: Yes.

(Here ensued considerable more discussion taken down by the reporter but expunged from the record.)

MR. COCHRAN: Passing now to Schedule "B," I will, of course, pass some of those owing to the fact that some of the items in Schedule "B" have been tes-

(Testimony of Thomas M. Hornada.)

tified to already, and also because of the failure of the defendant company to produce certain vouchers, but I presume they will be produced at a later hearing and I shall pass by that objection for a moment.

Complainant objects to each and every item of charge on Schedule "B" except the payment of "state and county taxes," and not merely as they appear in this account but as they may appear on the record to have been actually paid exclusive of any interest—penalties—with the exception of the "State and county taxes," the complainant submits that none of the items in Schedule "B" are lawful or proper charges on this account.

MR. ROBINSON: Does counsel then state, subject to correction by the tax bills to be produced, that the item of \$284.94—that is the first item—the item of June 27, 1918, of April 17, 1918, T. W. McGlinckey, county tax \$150.03, the item of November 23, 1918, to the same person, \$151.20, an item of November 10th, 1919, George J. Little, county tax, \$156.66, are correct items chargeable?

MR. COCHRAN: No, and counsel has tried to make himself very clear that there have been no vouchers produced for the very first item of back taxes, one for the so called county tax of November 23, 1918, of \$151.20.

MR. ROBINSON: We have testimony showing that spent.

MR. COCHRAN: We want to know what it has been spent for. I say, we reserve our further excep-

(Testimony of Thomas M. Hornada.)

tions and objections as to those two until the witness produces his vouchers. I am trying to clarify our position to prevent going through another hearing. As to the other two, I might say, Mr. Robinson, that the vouchers as to those are in evidence.

THE SPECIAL MASTER: As to the county taxes paid to McGlinckey, and the item of county taxes paid to George J. Little, no vouchers have been produced as I understand it. There are vouchers in evidence already for the \$150.03, and that is already in evidence.

MR. COCHRAN: And the voucher for \$156.66. I object to the item, the back taxes \$284.94, and the others as to which there have been no vouchers yet produced by this witness.

THE SPECIAL MASTER: There have been vouchers produced for the \$150.03, and the other item?

MR. COCHRAN: Yes; outside of those we object to every other item in this Schedule "B" on the ground they are not legal or proper charges against complainant and should not be allowed as a credit to the defendant company in this accounting. I pass now to Schedule "C." Complainant objects and excepts to every item on this Schedule "C," which is not clearly and affirmatively shown to be for necessary repairs to the property as it existed on March 3, 1917, when it was taken over by the Big Sespe Oil Company. In other words, any item appearing in Schedule "D" which the defendant can show was necessary and essential repair for the property after they took it over, we don't object

(Testimony of Thomas M. Hornada.)

to, but as to every other item in that schedule we except and object.

MR. ROBINSON: Have you any items in mind now that will apply to?

THE SPECIAL MASTER: For instance here is that Smith-Booth-Usher item, \$17.60. I have got that as a repair and another one \$4.23.

MR. ROBINSON: We have been over the main items very carefully in seriatim and if there is no objection to any of the items it seems to me we ought to know it now in order to save further discussion.

THE SPECIAL MASTER: We do not want to spoil the record for the cogeny of counsel's objections.

MR. COCHRAN: I think I had better finish my objections.

MR. ROBINSON: These objections are the same as if he said he objected to the account. This last objection does not clarify anything at all.

THE SPECIAL MASTER: Well, he is doing this tentatively.

(Here ensued further discussion in the reporter's notes, but expunged from the record.)

THE SPECIAL MASTER: Now, Mr. Cochran, go ahead with your categorical objections.

MR. COCHRAN: I have already detailed subject to correction from the testimony every item of expense in this account, everything. It is all digested.

THE SPECIAL MASTER: Very well.

MR. COCHRAN: Now, then, as to Schedule "D" of the account. The complainant concedes as to Sched-

(Testimony of Thomas M. Hornada.)

ule "D" of the account that the accounting company, the Big Sespe Oil Company should be allowed them on this accounting the salary of Mr. Hornada of \$100 a month and no more; that there should also be allowed for Mr. Hornada's management and operation of the property in addition to this salary a fair allowance in each month for the food which he supplied to himself at the camp. The amount of that I am not attempting to fix.

THE SPECIAL MASTER: Food?

Mr. COCHRAN: Food, yes, sir.

THE SPECIAL MASTER: Any other supplies?

MR. COCHRAN: No, sir. That is the only one I mentioned. In other words they should be allowed Mr. Hornada's salary of one hundred dollars and no more and also the disbursement for his necessary provisions.

The complainant is also willing to accept any items in this Schedule "D" which are shown and established to be or to have been made for absolutely essential and proper repair to the property as taken over by the Big Sespe Oil Company on March 3, 1917, and with the exception of these allowances, Mr. Hornada's salary and his provisions and all the items for necessary repairs to the property, the complainant excepts and objects to each and every item of that schedule.

THE SPECIAL MASTER: Passing to Schedule "E."

MR. COCHRAN: Yes, passing to Schedule "E." The complainant objects to Schedule "E" on the ground

(Testimony of Thomas M. Hornada.)

that it is immaterial and irrevelant, what personal property—so far as this accounting is concerned—was on this real property and what the valuation of this personal property is and also on the further ground—

THE MASTER: Are you specifying some time?

MR. COCHRAN: Yes, what personal property was on this real property since March 3, 1917.

And also on the further ground that this schedule which appears as a mere statement in an unverified account, is not evidence of valuation, and in connection with this schedule, complainant also objects to the schedule if thereby it is attempted to prove or establish that the personal property therein named is owned by the Big Sespe Oil Company on the ground that the mere statement of such ownership in this schedule or this unverified account is not proof of ownership.

Now, if Your Honor please, I think in fairness to us all, that I ought to say—I want to say this again—at the outset of making this statement, I said I would not attempt to pick out at this time the particular items that would fall within the general objection, but I did think it was fair to the court as well as the defendant to define our position, and if now they wanted to particularize which particular items shall be specifically objected to, I think we should be heard on that question.

THE SPECIAL MASTER: You are not prepared to make the specific objections to the court; of course, in making an objection of that kind it is made more on the principle of the drag net and your last objection is

(Testimony of Thomas M. Hornada.)

perhaps more open to criticism than the others. I am not quoting you now. I am quoting the substance of what you said. You said Schedule "E" is objected to on the ground that it is not competent to establish ownership. It is true, that statement is not verified, but it is a claim, and I think when they take their side of the case and you rest, we will have to go ahead and prove the ownership of the whole or any part of the articles named in the schedules; as to the values, I am not sure about that; they may be material or they may not, as to the future developments.

(Here ensued more discussion taken by the reporter but expunged from the record.)

MR. COCHRAN: May I just say a word?

THE SPECIAL MASTER: Yes, surely.

MR. COCHRAN: It seems to me we are reaching a position now where we can discuss the question of burden of proof. Now then, the defendant company comes in here and presents this account. We have made certain specific legal objections to it—not as to the specific legal items possible, but we have presented what we claim to be our legal specific objections to the account. If we are right in our contention, that nothing except repairs are properly chargeable on this account, on whom is the burden of proof to show that these were or were not repairs? Clearly the burden rests upon the accounting party to bring himself within the rule to pick out on his own account the items which he says are repairs, not for the complainant to come in

(Testimony of Thomas M. Hornada.)

and examine each one of his own officers to try to prove that they are not repairs.

(Here ensued more discussion taken by the reporter but expunged from the record.)

MR. COCHRAN: The statute says they are entitled to receive credit for such taxes as they pay on the property. That is the reason why I object to all this other tax. We object to all these other taxes because they are not taxes on the property. It will come out that they are income taxes and taxes on their stock issue.

THE SPECIAL MASTER: And there was interest and penalties, too.

MR. ROBINSON: I think we are going to save a lot of time by conceding that \$30 or \$40 was due as penalties, owing to the oversight of our secretary.

MR. COCHRAN: We have a principle which is underlined, and we are going to carry the principle through. Now, sir, I think we have defined our position.

THE SPECIAL MASTER: I think we can see at this time, unless counsel is at a loss as to what chart he desires to use in sailing a ship over the sea of their objections, to the account at the present time—their objection to the account at the present time it seems to me would rather call for an announcement on your part, or outline of what you expect to do. For instance, in looking over the objection I think on your theory of the case it seems to me you are liable for royalties only on the basis of one-sixth. The Special

(Testimony of Thomas M. Hornada.)

Master would like to have your theory as to that, and in the form of an open statement, if you desire to make it, so that the Special Master will be listening more intelligently. * * *

BY MR. COCHRAN: We do not question the amount received. We say it is not "Rents and Profits" within the meaning of the statutes.

THE SPECIAL MASTER: You say he received it, but that you are not going to allow it to him?

MR. COCHRAN: It is good, as far as it goes.

THE SPECIAL MASTER: Your objection is not constructive. I am not criticising you, you understand, but I must confess I do not exactly know myself just what theory should be followed.

(Here ensued more discussion expunged from the record.)

BY THE SPECIAL MASTER: If they are not entitled to \$3,588.61, I want to know what they are entitled to. In your objection to Schedule C you say you except to every item not shown necessary for repairs or care; am I right on that theory of it?

MR. ROBINSON: That includes the fire, I suppose?

MR. COCHRAN: Oh, yes.

THE SPECIAL MASTER: The repair of the fire loss would be a proper repair. He started out to make three concessions. He stated that \$100 per month was a proper salary for Mr. Hornada, and he conceded a fair allowance for the food supplied to himself and

(Testimony of Thomas M. Hornada.)

provisions, and he accepts also any items which are shown to have been essential repairs to the property as it existed on March 3, 1917. The last objection I think is to Schedule E. In substance that it was immaterial, what personal property was on the premises since March 3, 1917. Frankly I do not quite grasp the objection. I am a little at sea on that. Do you mean, Mr. Cochran, inventory of the property there since March 3, 1917?

Mr. Cochran: You see they are putting in this Schedule E. This is personal property, and they are saying "In the Summary Statement" in the account "That this was our personal property." I am assuming when I say that to speak for the defendant company, they say, "This was our personal property, and we think you should pay us seven per cent interest on the appraised valuation of it," and that is what they seek on page 2 under heading "By Interest on Value of Equipment," personal property, as per Schedule E hereto annexed, at the rate of seven per cent per annum, on an estimated valuation of \$17,856.50; they appraise the property at \$17,000. They say it is their property, and they want seven per cent interest for it. Now, we say there is no proof that it is their property. To be frank, we contend it is not their property; that they never owned the property, and never owned a stick or stone on it.

MR. ROBINSON: Who does it belong to?

MR. COCHRAN: The only thing we are interested in is that it does not belong to you.

(Testimony of Thomas M. Hornada.)

MR. ROBINSON: Does it belong to you?

MR. COCHRAN: The only thing is that it does not belong to you.

BY THE SPECIAL MASTER: Perhaps there is something you want to prepare yourself on.

MR. COCHRAN: In all fairness, if we had known this was going to break down today, we would have been ready and could have gone forward with the other items which have taken the balance of the day.

THE SPECIAL MASTER: Do you say, Mr. Robinson, you are not prepared to meet the objections now?

MR. ROBINSON: Not very well, we can't even see what the scope of them is until Mr. Hornada has made the effort to bring in these bills, bring in the contract.

* * *

THE SPECIAL MASTER: This Schedule C is troubling me. For instance, item "Oil Well Supply Company, \$81.73" means nothing to me. I do not know whether it is something the Big Sespe Company should be allowed or charged up for. I do not know whether it is for pipe, engine or repairs. And also the item of Haywood Lumber Company.

MR. COCHRAN: Your Honor has been very patient in this case.

THE SPECIAL MASTER: Frankly, I do not know what to do with Schedule C. I think I see your theory. I am going to be brash enough to announce to you gentlemen what I am thinking. I think I see your theory. Is it not that the accounts are made in such a

(Testimony of Thomas M. Hornada.)

general way that there is nothing to indicate what they are for; that it indicates that there were no proper books of account kept by the Big Sespe Oil Company. I suppose the records were rather in an unsettled condition, that their books were not carefully kept. I, sitting here as Special Master, shall insist that Mr. Cochran make a more specific objection.

It is not plain in detail at all. You must not misunderstand me. It is not plain at all, yet. I do not just yet know what the different items are. If you find yourself at sword's points, gentlemen, you will have to get together, and I will try to pick out what I shall allow. In other words, gentlemen, which ones come in one category, and what in another.

This matter was continued until the 9th day of June, 1920, at the hour of ten o'clock A. M.

WEDNESDAY, JUNE 9th, 1920, 10 o'clock A. M.

(Hearing resumed pursuant to adjournment.)

PRESENT: Same as before.

T. M. HORNADA, a witness called on behalf of the defendant herein, having been previously sworn by the Special Master, testified as follows:

DIRECT EXAMINATION

BY MR. ROBINSON:

I think it was in 1910 when I first became acquainted with the properties which I have described in my testimony and which are in issue in this case, in the vicinity of Fillmore in the state of California, known as the

(Testimony of Thomas M. Hornada.)

"Big Sespe Properties." There were oil wells on the property at that time.

Q. Just state what the condition of the property was then.

MR. COCHRAN: To that we object as irrelevant and immaterial; the only question here is as to the legitimacy of certain charges made in the account. Now, what can be the materiality of going into the question as to what the condition of the wells was way back in 1910? The question is, did they make certain expenditures, and were those expenditures proper and legally chargeable in this account.

THE SPECIAL MASTER: I think I shall allow it to go in in order that the court may intelligently determine what expenses were properly incurred, particularly as having a bearing on the question of repairs. It might be incompetent, irrelevant and immaterial to show what the condition of the property was some time past; that is to say, it may be remote. The only question presented is how far back we should go; it may be 1910, or 1916, or just before March 3rd, 1917. I suppose we may go back of that date. In bankruptcy matters it depends upon the circumstances, sometimes we go back twenty years. However, it seems to me to be material. It may be a little remote. What is the purpose of it, Mr. Robinson?

MR. ROBINSON: I am prepared to state it to the Special Master, I anticipated that counsel would want to know why we were going into it, although during his

(Testimony of Thomas M. Hornada.)

examination he has expected the court to depend upon his good faith in asking his questions. We wish to show what the nature of these wells was as far back as we can go; we expect to show that there were four wells on the property at that time; we want to show their condition, how much they were producing. Much of this is in response to an issue raised by the complainant, which we think is not upon a tenable issue of law, just in order to meet the issues, since it has been entertained, and in order to make a proper presentation on our side of it we think the whole facts should be presented.

Now, we wish to show the production of the oil wells back in those days, the condition of them, and then their condition during the time they were in the hands of the Pacific Crude Oil Company and Mr. Cochran.

We wish to show not only the amount of production during those periods, but also the cost of production. We wish to show it not only because of Mr. Cochran's strictures upon certain items of expenditure are in absolutely bad faith, but also to show the precedent that they establish, or at least maintain during the time he was holding the property—which may be some indication of the fact that they are proper charges.

THE SPECIAL MASTER: I was inclined to disagree with you at first, Mr. Cochran. I think perhaps Mr. Cochran's objection is good, but if it is a matter of comparing the expenses in those days as contrary to those now, I think it is proper.

MR. ROBINSON: It is impossible to take hold of

(Testimony of Thomas M. Hornada.)

an oil property at a certain period with material—with personalty in the ground and on the ground—to begin to talk about whether it was carried on, whether the operations were carried on diligently or not, without some method of comparison.

THE SPECIAL MASTER: I am rather inclined to agree with you. Let me see if I understand this. The question before me is as to the amount of property—the production of these wells during this time, and the expenses in connection therewith—in other words, you now desire to show they are reasonable, and in order to show that you want to show what the former expenses were. I will allow you to do so.

MR. ROBINSON: And also the condition of the wells, because we expect to show that at this time, now,—or during the period for which we are accounting—we are producing \$600 or \$700 worth of oil a month, whereas during Cochran's time they were producing \$250 or \$300 worth of oil. I think that issue is material, and offered in good faith, and if it is, then it is proper for us to make a showing which will discount it.

MR. COCHRAN: If Your Honor please, in spite of the charge of bad faith, which is rather surprising, I say that the issue of comparison is likewise made in bad faith from this standpoint: It is an absurdity to compare conditions which existed prior to the possession of the Big Sespe Oil Company since March 3rd, 1917, with the possession since that time.

(Testimony of Thomas M. Hornada.)

Whatever was done prior to March 3rd, 1917, was done by the legal owners and holders and occupants of the property. The possession by the Big Sespe Oil Company since March 3rd, 1917, is the most grievous case of bad faith which you can imagine. The interlocutory decree itself states they were trespassers and were illegally upon the property. How can it be possible by comparison with what the owners did to found the claim of this defendant company, who are illegally on the property and who are trespassers on the property? The law as to those two people is entirely different. It is unfair to compare the situation. What the owner might have done is perfectly proper and allowable and what in his judgment he might have thought best, but it is not a question of what the people thought best to do with that property, they were trespassers and, according to the interlocutory decree, they were on there illegally and the law says what they shall do or shall not do. It is not a question of comparison at all for that reason; and I certainly think it is not good faith for counsel to suggest the comparison as to the amount that was received from this property while the Big Sespe Oil Company has, in bad faith, and illegally, been on the property since March 3rd, 1917, and say, "We got so much more than Cochran did when he was in possession of it"; because this omits the very important factor that they were getting three or four times as much per barrel for it. There is no comparison at all.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: I cannot think there is any invidious or sinister purpose in counsel's mind. I have to have some confidence in members of the bar when they wish to present their cases here. It seems to me the testimony—or perhaps, rather, I should say, your comment—is pertinent and proper. Objection overruled.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: You may note your exception. Proceed. I hope no time will be wasted.

(Further discussion reported, but omitted from this record on direction of the Special Master.)

Q. BY MR. ROBINSON: Now, Mr. Hornada, just state the condition of the property, as to the number of wells and what their condition was, and so on, at the time you first saw it.

MR. COCHRAN: That is objected to as immaterial, irrelevant, and also too remote.

THE SPECIAL MASTER: Same ruling, it is the same point.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: You may save your points, Mr. Cochran.

A. When I first went on the property there, there was the four producing wells, but they was all small producers.

EXAMINATION BY THE SPECIAL MASTER:

I mean comparatively small compared to the present time, the same four wells as are producing now. That was in 1910.

(Testimony of Thomas M. Hornada.)

EXAMINATION BY MR. ROBINSON:

I was an ordinary roustabout, doing different things about the lease when I first went out there. I was employed by the Big Sespe Oil Company. The Big Sespe Oil Company was operating the property at that time. These wells are the same ones as I described in my examination by the complainant as Nos. 1, 2, 3 and 4.

Q. Now, then, Mr. Hornada, just state what the amount of production, the approximate amount of production and condition of well No. 1 was at that time.

MR. COCHRAN: And that we object to as not the best evidence, the original run tickets are the best evidence, and the best statement—

THE SPECIAL MASTER: Well, that doesn't preclude this witness from testifying also, does it?

MR. COCHRAN: If he can testify as to each particular item of this account, without producing the run ticket of the amount of oil produced—

THE SPECIAL MASTER: Isn't he familiar with what took place in the corporation; of course, the general rule is that the minutes are the best evidence, but the cases are to the effect that an officer who knows what took place may also testify.

MR. COCHRAN: It hasn't been shown that this witness can testify specifically as to what amount was run from May, 1910, to November, 1915.

THE SPECIAL MASTER: I think you qualified him as to the production of the wells, as to what the runs were on those wells.

MR. COCHRAN: Exception.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: Yes, objection overruled; if the answer is not proper you may move to strike it out.

A. No. 1 was doing at that time what was estimated about three barrels a day.

Q. BY MR. ROBINSON: And what was No. 2 doing?

A. No. 2 was doing about 4 barrels a day.

Q. And No. 3?

A. No. 3 run between 2 and 3 barrels.

Q. And No. 4?

A. No. 4 was doing about 10 or 12 barrels.

(Discussion at this juncture taken but expunged.)

Q. BY MR. ROBINSON: Now, for how long a time did No. 1 continue to produce, or at least, how long was the pump used on No. 1 after you first went there?

MR. COCHRAN: If your Honor please, to save frequent interruption, or interrupting counsel after each question, I take it Your Honor will allow me an objection along this line of questions and my exception?

THE SPECIAL MASTER: You may save your point; and you may save a point on any assignment of error and any testimony in relation to the issue of wells from 1910 to some time up to March 3rd, 1917. You may save your point, and you needn't make any further objection; I will so rule. I think Mr. Robinson has a right to examine him again, for a great many reasons, I won't stop to outline them.

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: We, of course, enter an exception as to the production of wells, as well as their condition.

THE SPECIAL MASTER: Yes.

BY MR. ROBINSON:

No. 1 well was on the pump up to—until 1913, about 1913. If I remember right it was some time during the forepart of the year 1913. Regarding conditions attendant upon its being taken off the pump, they were pumping a little more sediment and the gravity of the oil was lower than the other wells and there were at that time about five cents a gravity difference in the price of oil.

BY THE SPECIAL MASTER:

We cut out No. 1 to get a little bit better price for the oil we sold.

BY MR. ROBINSON:

When we cut it out we just unhooked it. We left the tube and rods in there. It has never been pumped since then. The derrick was destroyed in the fire of 1917. All of the woodwork above the ground was destroyed. And that is the well on which we recently placed a small derrick for the purpose of pulling the rods. We have not discovered yet just what the condition of that well is. No. 2 was producing, when I first went there, in 1912, No. 2 got to producing oil that did not burn well under the boiler. We were trying at that time to use oil from No. 2 for fuel oil under the boiler, but it got so bad it would not burn and the well was uncoupled and left in that condition. It has never been

(Testimony of Thomas M. Hornada.)

pumped since that time. The woodwork on the derrick was all burned during the fire of 1917 and has not been replaced at all. The tubing and rods are in there and by putting up a derrick and pulling the tube and rods out and replacing a new working barrel the well could be operated. The No. 3 would produce between 2 and 3 barrels a day and later on was deepened. It was started in 1910 and completed in 1912. After deepening, in the first place it flowed about 250 barrels a day and then was put on the pump.

BY THE SPECIAL MASTER:

That commences about 1912, 250 barrels a day, and after it was on the pump it dropped down to 20 barrels a day, and continually kept going down until about ten barrels a day. That was the condition of the well in 1914, about ten barrels a day.

BY MR. ROBINSON:

It was so producing at the time the Pacific Crude Oil Company took charge of it.

MR. COCHRAN: March 30th, 1914.

BY MR. ROBINSON:

No. 4 was doing about ten barrels a day when I first became acquainted with it. No. 4 was deepened in 1912. After it was deepened, for a long time it did about 25 barrels a day, and then it dropped down to about fifteen barrels a day; six or eight months after it was deepened it then continued to pump fifteen barrels a day or approximately that after that. I was not working on the property on March 30th, 1914. I had ceased working on the property in October, 1913.

(Testimony of Thomas M. Hornada.)

Q. Now, between the time of 1910, when you first became acquainted with the property, and October, 1913, will you state generally the kinds of work you had done on the property?

MR. COCHRAN: Objected to as immaterial and irrelevant, and also remote as to the time.

THE SPECIAL MASTER: I think he has been qualified. On that ground alone your objection ought to be overruled.

MR. COCHRAN: Exception.

A. I did general work, keeping up the engines.

BY MR. ROBINSON:

Q. Repairing engines, you mean?

A. Repairing engines.

Q. Running them?

A. Running engines; worked on pipe lines, helped pull wells, mowed weeds, worked on road, in fact a little of everything that goes on a lease of that kind.

BY MR. ROBINSON:

I was working on the road that led up to the wells and coming up to the wells, up to the canyon. After October, 1913, I was next employed in 1915, in July.

BY MR. ROBINSON:

My employment was arranged at that time with Mr. Cochran. I had a conversation with him about it in the Angelus Hotel in Los Angeles. Only Mr. Cochran and I were present.

MR. COCHRAN: In July, 1915.

MR. ROBINSON: We will offer this letter in evidence admitted as having been written.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: I will read it.

MR. COCHRAN: It is objected to as incompetent, irrelevant and immaterial, and too remote, and no foundation having been shown.

THE SPECIAL MASTER: Overruled, on the offer of counsel to connect it up.

MR. COCHRAN: Exception. What is the date of that, please?

THE SPECIAL MASTER: It is a letter dated—written at the Angelus Hotel, Los Angeles, California, July 19, 1915, addressed to T. M. Hornada, Sespe, California, written by Wm. H. Cochran, complainant here. It will be Defendant's Exhibit "A." I will read it aloud in order that there may not be the slightest misunderstanding.

(The letter was offered and received and was thereupon marked by the Special Master Defendant's Exhibit "A.")

BY MR. ROBINSON:

I had a conversation with Mr. Cochran referred to in that letter accepting the terms and conditions and in that conversation the arrangement was discussed as to my taking the assignment of the oil run.

BY THE SPECIAL MASTER:

This letter practically states and sets forth the conversation had with Mr. Cochran therein referred to and was the plan and outline carried out to the extent I took the oil runs from the wells in my own name and accounted to Mr. Cochran. So the outline was carried out.

(Testimony of Thomas M. Hornada.)

BY MR. ROBINSON:

I afterwards took charge of the property.

BY THE SPECIAL MASTER:

The improvements were made according to the plan outlined. The general spirit of this letter was carried out as far as I was concerned. There was no objection on the part of Mr. Cochran to the way it was carried out, during the two months. There was never any objection made by Mr. Cochran to this provision for a two months term as to the way I carried it out.

BY MR. ROBINSON:

I continued after that two months term and there was no change in the manner in which I carried out the plan. I continued to operate this plant until February, 1917 and rendered accounts to Mr. Cochran during all of that time. I had my little scratch pad, statement of accounts, during all that period of time. I made entries in that book the first of every month, excepting the little statements that I naturally have in the way of labor and things of that kind. I put it down as of the date I made the transaction. I made the entries in the book at the time I made the payments, as they indicate, and made my totals at the end of the month. I have that book here.

BY THE SPECIAL MASTER:

It is a book showing the oil runs.

THE SPECIAL MASTER: And sales and receipts?

MR. ROBINSON: Expenditures, "Star stables" and "livery", and these various other things.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: Running from when?

MR. ROBINSON: From July, 1915, to February, 1917.

BY MR. ROBINSON:

The page headed at the top, "July 19, 1915", "Acct. with Wm. H. Cochran", is the beginning of the account under this management. Expenditures which are shown on that page were made during the period they are shown on that page.

THE SPECIAL MASTER: I feel as if I am groping and probably have been.

MR. COCHRAN: It is found by the trial court as particularly set forth in the decree that the legal title to this property was in Cochran as trustee.

THE SPECIAL MASTER: At what time?

MR. COCHRAN: Since March 30th, 1914, at the time of the sale to the Big Sespe Oil Company; they find specifically that the legal title of that property was in Cochran as trustee.

THE SPECIAL MASTER: March 30th, 1914.

MR. COCHRAN: Yes, that is the time the Big Sespe sold the property to the Pacific Crude Oil Company as Hornada testifies to. The deeds which are in evidence are deeds from the Big Sespe Oil Company to Cochran as trustee for the Pacific Crude Oil Company. Those deeds were introduced in evidence before the trial court and under the rules are here before Your Honor. * * * They endeavored to thresh out before the trial court what the rights of the Pacific

(Testimony of Thomas M. Hornada.)

Crude Oil Company were in that real property which was sold under execution, under their judgment of the Big Sespe Oil Company against the Pacific Crude Oil Company, and the trial court found that under the California statute the Pacific Crude Oil Company had no right, title or interest whatever in that real property but under the statute had simply the right to enforce the trust in the hands of Cochran as trustee, and therefore that was all that was sold by the execution sale and that was all that the Big Sespe Oil Company acquired by that sale.

THE SPECIAL MASTER: The Big Sespe Oil Company acquired what?

MR. COCHRAN: Nothing except solely the right which the Pacific Crude Oil Company had to enforce the trust in the hands of Cochran as trustee. The California statute provides that, if I may divert again, when title is held by Cochran as trustee that the beneficiary takes no right, title or interest, whatsoever in or to the real property, but simply has the right to enforce the trust in the hands of the trustee. Now, that being so, the only thing that the trial court found that the Big Sespe Company had acquired by this sale under execution against the Pacific Crude Oil Company was this right to enforce the trust in the hands of Cochran as Trustee.

THE SPECIAL MASTER: They had no judgment against Cochran as trustee at all; is that your point?

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: None at all. They had sued Cochran the same as they had the Pacific Crude Oil Company, but the judgment was against the Pacific Crude Oil Company. * * *

THE SPECIAL MASTER: Let me see if I get your view. Under that sale the Big Sespe Oil Company, having acquired only the right to enforce such rights as the Pacific Crude Oil Company had to the trust in the hands of Cochran, then they had no right whatever to go upon the property?

MR. COCHRAN: Absolutely. * * *

THE SPECIAL MASTER: You contend they have been trespassers ever since 1915?

MR. COCHRAN: No, sir; ever since March 3, 1917. * * * I say, having been clearly established by the adjudications in this case, that they are trespassers, the sole question is, what is their legal duty and obligation? What are they entitled to credit for on this accounting? Now, sir, as I say, decisions are uniform on that point. There is no question about that. And the rule of law as laid down in not only by the California courts, but by the United States courts and the United States Supreme Court, states that the defendant company is entitled to receive only credit—or credit only—for such expenditures as are absolutely and necessarily made to produce that oil and to maintain that property in ordinary conditions and the taxes on the real property. That, sir, is all they are entitled to receive, and that only. * * *

(Testimony of Thomas M. Hornada.)

(Here ensued more discussion taken by the reporter but expunged from the record.)

BY THE SPECIAL MASTER:

Then, according to your contention, it is absolutely immaterial here whether there was any transportation of machinery, lumber, persons or poles from the station to the mine whatever.

MR. COCHRAN: Unless it was for absolutely necessary repairs. I will qualify that. I think they are entitled to absolutely necessary repairs.

(Whereupon a recess was taken until two o'clock P. M.)

(WEDNESDAY, JUNE 9, 1920; 2 o'clock P. M.)

(Hearing resumed.)

PRESENT: Same as before.

E. R. SNYDER,

a witness called on behalf of the defendant herein, having been first duly sworn, by the special master, testified as follows:

DIRECT EXAMINATION:

BY MR. ROBINSON:

My name is E. R. Snyder. I am superintendent of an oil company. I am employed by C. C. Harris Oil Company, Trojan Oil Company, and Directors Oil Company. I am assistant superintendent of the Trojan. I have been in the business of producing and selling crude oil and its products about thirty years, since '93, about 28 years in California. My occupation at the present time includes the management of

(Testimony of E. R. Snyder.)

an oil producing company. I am manager of the Harris Oil Company and the Directors Oil Company. I am general manager, not superintendent, and assistant manager, of the Trojan. I am familiar with the oil fields of Southern California to a certain extent. I am familiar with the oil producing territories in Ventura county, particularly in the neighborhood of Fillmore. My acquaintance with that section covers about eight years last past. I have in times past been familiar with the operations of oil companies in the Bakersfield territory, to-wit, Taft and Maricopa. I have operated in those fields. I am familiar with the operations in the fields in and surrounding Los Angeles city. I have operated in those fields. Though I do not know the lines I am familiar with the territory surrounding the following described property. No, there is only that one property in the vicinity thereof answering the following description of said property, which adjoins the Kentuck property, which are known as the Big Sespe properties situated about six miles from the town of Fillmore in the county of Ventura including the west half of lot No. 6, lots Nos. 7 and 9 of section 1, in township 4, range 20 west of San Bernardino meridian in California, containing 81.7 of an acre, excepting therefrom the following described parcels of land situated in section 1, township 4, range 20 west of San Bernardino Meridian, county of Ventura, state of California, described as follows: Commencing at the northwest corner of the Kentuck oil

(Testimony of E. R. Snyder.)

claim as said claim is described in that patent executed by the United States Government to John S. Crawford and Joseph F. Dye, February 1, 1898, and recorded in Book 2, page 336, of Patents, Records of Ventura county, thence, first: east five chains along the north line of said Kentuck oil claim; thence, second, north at right angles, 3 claims; thence, third, north 60 degrees, 60 minutes west, 4 chains; thence, fourth, south 56 degrees west to a point 4 chains north of the center of said section 1, township 4 north, range 20 west, which point is also the northwest corner of the southeast quarter of said section 1; thence, fifth, south 4 chains along the west line of said southeast quarter of said section 1; thence, sixth, east at right angles 5.95 chains to the west line of said Kentuck oil claim; thence, seventh, north along the west line of said Kentuck oil claim to the place of beginning, containing 9 acres more or less and including the New York Oil and Placer Mining claims located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in Book 2, page 245 of Mines, Records of Ventura county, and included in the location of the "Nellie Belle" mining claim hereafter referred to and also all that part of the Henry Gage Placer mining claim not included in said lot 7, section 1, township 4 north, range 20 west, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in Book 3 at page 154 of Mines, Records of Ventura county, and also the Elwood Placer mining claim located April 1st, 1910, by

(Testimony of E. R. Snyder.)

T. M. Hornada, E. F. Coldwell, J. A. Clampitt and E. F. Kendall, recorded in Book 19, page 315 of Mines, Records of Ventura county, and also the Nellie Belle Placer mining claim located by T. M. Hornada, E. F. Coldwell and J. A. Clampitt, April 1st, 1910, and recorded in Book 19, page 315, of Mines, Records of Ventura county, which property of the Big Sespe consists of 86 acres with the exception of that part stricken out here and the New York Oil and Placer mining claim, the Henry Gage Placer mining claim, the Elwood Placer mining claim, the Nellie Belle Placer mining claim, located as described. This property being located at or near the confluence of the Big Sespe and the Little Sespe canyons in the county of Ventura. I was on the property once two years ago.

BY THE SPECIAL MASTER:

As I remember there were only three wells pumping.

BY MR. ROBINSON:

One well, I believe, was not pumping. I observed the equipment on the property and to a certain extent acquainted myself with the production of that property. I am familiar with the reasonable market values for leasing or rental purposes of oil producing properties in the vicinity of the town of Fillmore, during the period from March 3, 1917, up to the present time, that is the lease or rental value as oil producing property.

Q. What, in your opinion, Mr. Snyder, was the reasonable and fair market rental value of this prop-

(Testimony of E. R. Snyder.)

erty, the Big Sespe property, which we have described in this examination, during the period between March 3rd, 1917, and the present time, for use in the production of crude oil?

MR. COCHRAN: Now, if Your Honor please, we object to that as immaterial and irrelevant. The only real issue in this suit is as to whether or not the defendant company has made a proper return of the moneys which they received and collected from this property.

THE SPECIAL MASTER: I am inclined to agree with you, unless you want me to hear from Mr. Robinson first, and then go ahead.

MR. COCHRAN: That is objected to.

MR. ROBINSON: I did not hear the form of the objection.

MR. COCHRAN: I said it is objected to as immaterial and irrelevant.

(Then ensued discussion.)

THE SPECIAL MASTER: I am trying to think of and state a principle of law that may apply—that may be applied, for instance, if there had been, in connection with this property, a certain royalty paid either by the Sespe or somebody else for its production, if an established fact, and it could be proven that they were running a property and paying a certain royalty for it, or that might establish a reason for the theory or doctrine enunciated, contended for by Mr. Robinson, but as there is no evidence yet of

(Testimony of E. R. Snyder.)

any royalty, I think it is correct. However, I am not closing my mind and if that is the doctrine, I can be made to see it through the authorities. I am inclined to think, however—I may be far behind you gentlemen, maybe both of you—if the situation both actually and literally—or later, actually and legally—to be exact, is as Mr. Cochran states it, I think the reasonable expense of carrying on that business, of carrying the men to and from their work, of making the repairs, fixing the road, to be allowed as an expense.

Now, I don't think it would be equitable or right to allow simply—allow necessary repairs to the plant and allow that only. Why, that would not include even the payment of the wages of the men. Now, I have stated how I feel about it. Maybe I will change my opinion. I am willing to be caught. What is the reference to the statute?

(Then ensued discussion.)

THE SPECIAL MASTER: After hearing you, I am inclined to think I am right in my first impression that the testimony wasn't admissible, but I want to be sure. I listened to every word of your argument, Mr. Robinson, but I do not think it applies in this case. It is just like the case regarding royalty. I do not want to hark back to the patent law, but the law is supposed to be a unity, and what applies to one set of facts should apply to another. It seems to me it is analogous to the patent royalty case. I do

(Testimony of E. R. Snyder.)

not think the testimony is admissible, but I will be very patient. I am rather inclined to agree with you, but I would be very glad to hear from you.

MR. MARTIN: Now, supposing—

MR. ROBINSON: If the court is going to rule against us—

THE SPECIAL MASTER: I am going to rule in your favor—

MR. ROBINSON: We are ready to take the ruling and not go any further.

THE SPECIAL MASTER: I might change my mind. I have announced your theory to show I understood it perfectly. In other words, that you contend you are responsible only for such rents which are attributable to the property, to use your term, and which are calculated at a certain percentage of the production of the wells.

I do not think that applies to this case. I do not think it is applicable here. In other words, I think it is incompetent here. It may be material, to use the word technically, but I do not think it is competent. I think I shall proceed unless my mind is changed, along the original idea, that I will take the production of the wells, the runs, as far as I can, and then I will hear testimony on the expenses of operating the property and developing it, within reasonable limits; operating the wells and handling the property, including the expenses of management as well as repairs, and if I am wrong about that, I will be very

(Testimony of E. R. Snyder.)

easily corrected by the court above. They can simply strike out certain allowances I make, which Mr. Cochran thinks are improper. In other words, it doesn't have to come back to me for further allowance. As long as I feel that way, you may proceed with the case.

MR. ROBINSON: We may have to come back to take this testimony.

THE SPECIAL MASTER: What is that?

MR. ROBINSON: Is this testimony admitted?

THE SPECIAL MASTER: I think the testimony is improper. I do not think it is within the issues. I know there is a rule that when there is an objection to testimony before a Special Master, he may rule upon it, and if the Special Master sustains the objection, the testimony nevertheless goes in, and the court and jury can pass upon it, but in view of that we will probably spend a couple of days on that. The record is clear. If I am wrong about it, you can take it up to the higher tribunal, if I am wrong on this testimony.

MR. ROBINSON: Of course, I want to make my objection.

THE SPECIAL MASTER: Read the question, Mr. Reporter, so that counsel may make his objection quite clear.

(Last question read by the reporter, as follows: "Q. What, in your opinion, Mr. Snyder, was the reasonable and fair market rental value of this property, the Big Sespe property, which we have described

(Testimony of E. R. Snyder.)

in this examination, during the period between March 3rd, 1917, and the present time, for use in the production of crude oil?”)

MR. COCHRAN: I would like to have my objection read, Mr. Reporter.

(Objection read by the reporter, as follows: “Now, if Your Honor please, we object to that as immaterial and irrelevant.”)

THE SPECIAL MASTER: Do you want to add “incompetent”?

MR. COCHRAN: Make my objection read “incompetent, irrelevant and immaterial.”

MR. ROBINSON: And is the witness instructed not to answer?

THE SPECIAL MASTER: When I sustain the objection I do not take any answer. I always instruct the witness not to answer.

MR. ROBINSON: We wish to except to the ruling, and also the instruction of the witness, and refusal to permit the testimony.

BY MR. ROBINSON:

I do not know the methods generally and customarily used in the oil industry in Southern California, including the territory known as the Ventura Field, in the county of Ventura, for estimating the profit producing value of real estate in operating the real property for the production of crude oil, that is, not in this particular location, I mean on this particular piece of property.

(Testimony of E. R. Snyder.)

Q. Has there been in the oil business and among oil operators generally throughout Southern California a basis of estimating the profit-bearing value, or profit-producing value, of real estate, in operation for the production of crude oil?

MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: You may answer.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: You understand, Mr. Snyder, if you do not get the question, let the reporter read it to you. Did you understand that question thoroughly? If you do not understand it clearly, let it be re-read to you.

THE WITNESS: I understand the question thoroughly.

THE SPECIAL MASTER: Read the question, so we may all understand it, Mr. Reporter.

(Last question read by the reporter.)

MR. COCHRAN: It requires an answer of yes or no, doesn't it?

THE SPECIAL MASTER: Yes.

A. And I will answer it in this way, that there is such a method of determining the value of a producing property.

THE SPECIAL MASTER: Yes. All right.

Q. BY MR. ROBINSON: Now, during the years mentioned—I mention the years merely because they cover this particular case—has that method of ap-

(Testimony of E. R. Snyder.)

praising the value of oil-producing property in Southern California been in general use among oil operators and oil producers?

MR. COCHRAN: Same objection.

THE SPECIAL MASTER: Objection overruled.

MR. COCHRAN: Exception.

THE WITNESS: What does he object to?

MR. ROBINSON: You may answer.

THE SPECIAL MASTER: You may answer the question.

A. In some cases it has been used.

Q. BY THE SPECIAL MASTER: Irrespective of leases?

A. Irrespective of leases, to get the value of a certain lease.

BY MR. ROBINSON:

There has been in Southern California, in the oil business generally, among oil operators a method of appraising the amount of rent or of royalty to be paid for the use of land for producing crude oil therefrom.

Q. And will you state what that method is?

MR. COCHRAN: Now, I object to that as incompetent, irrelevant and immaterial, for the reasons already discussed.

EXAMINATION BY SPECIAL MASTER:

These things are governed by the amount of production of your particular lease. If you were to get the profit-producing value, that production would be

(Testimony of E. R. Snyder.)

irrespective of any proposed lease that may be put on the property, or given for the property; it would be the customary way to find the value of that property. Of course you can't tell what the future value would be in oil production. If the property had been operating in the past and oil had been used upon it in the past, such expenditures could be estimated or fixed to calculate the value of the property during the past at a time when oil had already been produced upon it. By giving a certain amount of depreciation for each year, you can tell pretty close what it is going to do. I say that there has been since 1917 a custom established of business here upon which the profit-producing value of any oil territory could be estimated in order that the rental value of a proposed lease could be fixed. It has been a custom and practice in Southern California, and particularly in Ventura county in past years, and particularly in 1917, to estimate the profit-producing value of oil property for the purpose of a lease in the future, by ascertaining the amount of their production, particularly in the past. In other words, it was to take the past production to estimate the value of the property. Such is the only way to estimate the value of the property, to take the past production. There has been a custom or practice in Southern California, and Ventura County, under which the past value of the property has been estimated by taking the runs of oil to estimate the value.

(Testimony of E. R. Snyder.)

Q. BY MR. ROBINSON: Now, Mr. Snyder, will you state what the customary rule of estimating the value of oil property is and has been during the period of the past few years just mentioned?

MR. COCHRAN: I object to that as incompetent, irrelevant and immaterial.

BY THE SPECIAL MASTER: I think he has answered it, but he may answer it again. Objection overruled.

MR. COCHRAN: Exception.

Q. BY THE SPECIAL MASTER: I do not care here, Mr. Snyder, for any rule here that you use or oil men use for estimating what should be paid for a lease in the future; that is to say what should be paid for oil leases in future estimated by production in the past, unless exactly the same rule would be used by you oil men in estimating the amount of damage which a person should pay for the use and occupation wrongfully of a property in the past.

MR. COCHRAN: We object as immaterial, incompetent, irrelevant.

BY THE SPECIAL MASTER: I think it is a short way of putting it. I thought it was strongly in your favor.

MR. COCHRAN: Exception.

BY THE SPECIAL MASTER: Do you understand the difference?

A. Yes, I think I do, if I understand the question.

BY THE SPECIAL MASTER: If I am asked to appraise the value of a property in the past which

(Testimony of E. R. Snyder.)

has been producing oil for a certain period in the past, say from 1907 to the time being, I would do it by the oil runs, by the actual oil runs, presented to me from day to day.

BY MR. COCHRAN: I was going to move to strike out all this testimony.

BY THE SPECIAL MASTER: I think it is in your favor.

MR. COCHRAN: I am going to move to strike it all out collectively.

BY THE SPECIAL MASTER: If you do I will probably grant it, but it is in your favor.

EXAMINATION BY MR. ROBINSON:

During this period of 1917 and 1918, in estimating the value of the realty from the oil runs, that is, how would I arrive at a proper remuneration for the use of the property, estimated by a certain royalty, a certain percentage of the production for the use.

Q. BY MR. ROBINSON: Will you state what the rule is how you fix the percentage?

BY MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial.

BY THE SPECIAL MASTER: Objection overruled.

MR. COCHRAN: Exception.

A. That is governed entirely by the amount of production on the property. Now, if it is a small production it would run in the neighborhood of one-tenth, or ten per cent would be the production. If

(Testimony of E. R. Snyder.)

it is a larger production naturally the percentage would be a little larger.

EXAMINATION BY MR. ROBINSON:

In the case of a property producing an average between six hundred and seven hundred barrels a month, of twenty per cent gravity oil, I would say one-eighth.

EXAMINATION BY THE SPECIAL MASTER:

I am fixing the rental value of the property for the value of the lease now.

Q. BY MR. ROBINSON: Assuming that property such as has been described to you here, in Ventura county, which is six miles from Fillmore, has upon it four wells, two of which were producing oil during that period, from the period of March 31, 1917 up to the present time; that it was operated by a person not the owner of the real estate, that is not the owner of the title to the real estate, and during that time produced an average, we will say, of seven hundred barrels per month of twenty gravity oil, what, in your opinion, would be the reasonable market value and the fair market value of the real estate in terms of royalty such as you have hertofore described for the use of the real estate in producing that oil?

MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial.

BY THE SPECIAL MASTER: I will overrule it. I will take that testimony.

MR. COCHRAN: Exception.

A. I would say one-eighth royalty.

(Testimony of E. R. Snyder.)

EXAMINATION BY THE SPECIAL MASTER:

The percentage usually goes up as production increases; that is, you pay a larger royalty for a greater production. Whether, that one-eighth royalty is based on the number of barrels or upon the price depends. They are one-eighth of the net proceeds or one-eighth of the oil usually produced on lease in the tank. I mean the net after the use of the oil on the operation of the property. I mean net proceeds after all cost of transportation and such a deduction, what is to be paid out of it; what actually came back into the hands of the company after paying the marketing expenses of that property at the time the oil was produced, that would be the value of the lease; that would be the rental on that property. I would apply that method to it to ascertain the rental on that property at the time the oil was produced. I could tell exactly in a case relating to the past, but I could not tell in a case relating to the future, that is the rental. I could figure out the rental value exactly under that rule in dollars or barrels if I knew the production, that is the oil runs.

Q. BY MR. ROBINSON: Mr. Snyder, are you familiar with the reasonable market value of the services of a pumper, a man directly engaged in the pumping of oil wells in Southern California, during the period from March 31, 1917, to the present time?

MR. COCHRAN: That is objected to.

THE SPECIAL MASTER: Objection overruled.

(Testimony of E. R. Snyder.)

MR. COCHRAN: Exception.

THE SPECIAL MASTER: I am inclined to agree with you, Mr. Robinson. I may change my mind.

Q. BY THE SPECIAL MASTER: Do you know what it is?

A. Yes, sir.

EXAMINATION BY MR. ROBINSON:

I am now paying \$195 per month in Ventura county.

EXAMINATION BY SPECIAL MASTER:

I had no men at that time in 1917 and 1918, in Ventura county, but I think the last seven or eight months I have been paying \$195 per month to a man who has charge of the production, that is, running the pump.

EXAMINATION BY SPECIAL MASTER:

I do not know what they were paying in the vicinity of the Big Sespe, that is, what other people were paying in the vicinity of the Big Sespe for such work; in 1919 they were paying the same as now, about the same, \$150 to \$200 per month, according to the responsibilities. The wage scale is supposed to be the same in different parts of Southern California. There has been a slight raise, of course, lately. The rate ranges according to the trade in different parts. There is a uniform rate of pay for certain class of labor in oil work.

Q. BY MR. ROBINSON: Do you know what the reasonable market value of the services of a pumper were in Southern California, an oil pumper, during the years 1917 and '18?

(Testimony of E. R. Snyder.)

MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Objection overruled.

MR. COCHRAN: Exception.

A. I think in 1917 the wage scale for pumpers was \$150 per month and in 1918 the scale was raised a certain percentage.

THE SPECIAL MASTER: Making it about \$160, I think.

EXAMINATION BY MR. ROBINSON:

\$160 per month.

EXAMINATION BY MR. ROBINSON:

I said \$195 in 1919.

Q. BY MR. ROBINSON: Mr. Snyder, from your experience, are you acquainted with the reasonable market value of a superintendent of oil production?

A. Yes, sir.

MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial; no connection with any issue of the account.

THE SPECIAL MASTER: Same ruling:

MR. COCHRAN: Exception.

BY MR. ROBINSON:

I am acquainted with the reasonable market value of the services of a general manager of oil producing companies in Southern California, for the general supervision, for the production of oil from oil properties.

(Testimony of E. R. Snyder.)

Q. BY MR. ROBINSON: Assuming that a corporation was operating a property in the vicinity of Ventura county, in the vicinity of Fillmore, in Ventura county, in such a location as I have described to you in your examination, the property being about six miles from Fillmore; that there was on the property a man in charge of the pumping and the general work of repair and during the routine work of carrying for the machinery and keeping the plant in order; that this property has four holes which had been oil wells, two of which were out of commission, two of which were producing, and during the period over say about three years the two oil wells had produced an average of about seven hundred barrels of crude oil per month, seven hundred barrels of twenty gravity crude oil per month; that this company employed a person as general manager and superintendent of all the work, whose duties consisted of giving instructions to the pumper in charge of the property and passing upon the question of repairs to be made upon the property; of ordering and arranging for the transportation to the property of the parts for repairs, except the small parts which could be obtained in the local neighborhood; that he arranged for the hiring and transportation of men from time to time to assist in operating the two wells and in road building and in making repairs to the road, pipe lines, and occasionally once or twice a month went to the property himself and looked it over and held consultation once or twice

(Testimony of E. R. Snyder.)

a month at least with the pumper concerning the property, and ask about its operation at least once a month; went to the property about its operation—at least once a month went to the property, and consulted at least twice a month away from the property with the pumper in charge of the property—what, in your opinion, was the reasonable market value of the services of that person so employed by that corporation?

BY MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial, not directed to any particular item of the account.

THE SPECIAL MASTER: Objection overruled.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: Save your point.

MR. ROBINSON: I will add during the period from March, 1917, to the present day.

MR. COCHRAN: We object also on the further ground that the facts inserted in the question are not supported by the question.

BY THE SPECIAL MASTER: I will overrule your objection.

MR. COCHRAN: Exception.

A. In other words this general manager would have full control of everything and all responsibility.

MR. COCHRAN: That is objected to; on the contrary this record shows it is objected to on the ground the question was not supported by the record, but the testimony is quite to the contrary. We will assume

(Testimony of E. R. Snyder.)

for the purpose of argument this is directed to Clampitt's testimony and Clampitt's salary. Now, the fact is as adduced from the record that Clampitt did not occupy any such position as it is now attempted to show that he said he did.

BY THE SPECIAL MASTER: Not from your point of view, perhaps, but from Mr. Robinson's. I think there is sufficient testimony or evidence to support the question. Objection overruled.

MR. COCHRAN: Exception.

A. I would say \$200 per month.

MR. ROBINSON: That is all. Cross-examine.

CROSS-EXAMINATION

BY MR. COCHRAN:

I have been associated with the Harris Oil Company, I think, over five years. The attorneys for the defendant, Big Sespe Oil Company, are also attorneys for the Harris Oil Company and Mr. Cates is one of the officers of the Harris Oil Company, holds the office of vice-president and his family are also interested and stockholders in the Harris Oil Company. I have not been over this case quite a number of times with Mr. Cates. I do not think I heard of the case over a day or two ago. Assuming that the piece of property was producing one thousand barrels per month and selling at one dollar per barrel which would be one thousand dollars and a party was entitled to one-eighth royalty on that property, he would receive one-eighth of one thousand dollars. In other words

(Testimony of E. R. Snyder.)

the owner of the property would get one-eighth—the royalty would be one-eighth. The only deduction is such fuel as is used on the lease and as to whether there is a deduction from the oil which was used he only gets, only one-eighth out of the net. By net I mean after a certain amount of fuel oil has been used on the lease. As to whether they sell the fuel oil or use it on the property, I would consider all they produced up there fuel oil. You do not sell what is used for fuel oil on the property. After one has used a certain amount of fuel on the property the balance should be sold. The one-eighth royalty should be based on the gross receipts of what is actually sold. My previous testimony was that it was either one-eighth of the oil delivered to tank on lease, or one-eighth of the net proceeds of the oil. You don't get one-eighth of the gross proceeds if you sell any fuel oil.

BY THE SPECIAL MASTER:

My answer was that one-eighth of the number of barrels or number of gallons that were produced upon the property, less what was used for fuel on the property. You take the amount of runs into your tank and after a certain portion has been used for fuel on the property one-eighth is figured on.

MR. COCHRAN: Now, I move to strike out all the testimony of this witness on the ground that it is immaterial, irrelevant and incompetent. It is not directed to any of the issues in this account, and that it is in direct violation of not only the directions of

(Testimony of E. R. Snyder.)

the interlocutory decree, but also the statutory provision under which this accounting is had.

BY THE SPECIAL MASTER: The testimony stands for what it is worth. You may save your point for the district court judges. For the present time the objection is overruled.

MR. COCHRAN: Exception.

BY THE SPECIAL MASTER: You may save your exception.

BY THE SPECIAL MASTER: What is the witness' full name?

WITNESS: Benjamin Howe.

MR. COCHRAN: May I ask a question to shorten this examination? Is it your purpose, Mr. Robinson, to have him testify as to the same line of examination as that that Mr. Snyder went through, the same facts?

MR. ROBINSON: The same.

BY THE SPECIAL MASTER: Will you stipulate he will so testify?

MR. COCHRAN: Yes, sir, there is no use our wasting time here on that. I am assuming he is qualified the same as Mr. Snyder was and no further.

BY THE SPECIAL MASTER: If there is going to be any question of his qualifications, I have thrown the burden upon the other side, Mr. Robinson, and they did not do it. I think his qualifications all right. Now, it is stipulated he will testify to the same effect and substantially the same as the other witness.

MR. COCHRAN: Yes.

(Testimony of E. R. Snyder.)

BY THE SPECIAL MASTER Now, what more could you ask?

MR. COCHRAN: It being understood that the same objections and exceptions apply.

BY THE SPECIAL MASTER: Will you accept that stipulation, Mr. Cates?

MR. CATES: Yes, we will accept that.

BY THE SPECIAL MASTER: Will you agree to withdraw it to save time, Mr. Cochran?

MR. COCHRAN: Yes, we will do anything to save time.

BY THE SPECIAL MASTER: It will be deemed that he will testify to the same effect as the other witness and subject to the same objections.

(Whereupon an adjournment was taken until June 14, 1920, at the hour of 2 o'clock P. M.)

June 14, 1920; 2 o'clock P. M.

T. M. HORNADA,

resumed the stand and was examined as a witness for the defense.

EXAMINATION BY MR. ROBINSON:

Q. I notice in the memorandum of account which we have produced, beginning on the date July 19, 1915, that you have certain items designated as Star stables, August 17, 1915, \$2.50; September 17, 1915, \$2.50; October 18, 1915, \$4.00. What are these items for?

MR. COCHRAN: At the last hearing that ques-

(Testimony of Thomas M. Hornada.)

tion was asked and we formally objected and stated the grounds of our objection.

THE SPECIAL MASTER: You may save your point. I am going to overrule the objection.

A. These items are for livery hire, for going to the wells from Fillmore. By "livery" I mean for the purpose of transportation of men. Occasionally there would be something to cart up there. That included myself.

Q. During the period of time you were working up there for the Pacific Crude Oil Company under the direction of Mr. Cochran, did you continue to use that method of transportation?

MR. COCHRAN: That is objected to as assuming something which not only has not been proven before; on the contrary has not been proven to be a fact. There is no testimony that Mr. Hornada ever worked for the Pacific Crude Oil Company; on the contrary he testified after July 19, 1915, he worked for Wm. Cochran, as trustee of the Pacific Crude Oil Company. That is why I object to the question.

MR. ROBINSON: He has not so testified.

THE SPECIAL MASTER: There is no testimony this witness was working for Cochran. I will overrule the objection.

MR. COCHRAN Exception.

A. Yes.

BY MR. ROBINSON (Continuing):

I had a discussion with Mr. Cochran at the time I undertook this employment as to who was employing

(Testimony of Thomas M. Hornada.)

him. This was at the Angelus Hotel. He and I were present and nobody else.

Q. State what was said.

MR. COCHRAN: I object. Not pertinent to any issue involved in this accounting.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

A. I first went to Mr. Cochran to talk to him about opening up that property up there, and I was needing bread and butter at that time, and he said he would have to take it up with his client before they could do anything.

BY MR. ROBINSON (Continuing):

He named his client. He said the Pacific Crude Oil Company. He said his client was in Philadelphia. Later on we had a further conversation concerning employment. He said he would know within a week or ten days or within two weeks, on communicating with his client. During that time I went away. He was to call me on the telephone when he heard. I heard from him later, within two weeks. I went to see him at the hotel. He said he was not ready yet. He did not have a satisfactory answer from his client, or something to that effect. I do not think he mentioned at that time who his clients were. Later on I had a conversation with him at which I had an answer. It was a short time after that. It might have been at that time or close to two weeks; it was at the Angelus Hotel. Mr. Cochran and I were present. He

(Testimony of Thomas M. Hornada.)

said he was ready then to go ahead and open up the property and asked me what I would take and I made him a proposition upon it on a basis of fifty fifty. He objected to that and said he wanted to start on a salary basis. He told me he had heard from his client and was ready to open up the property. I discussed with Mr. Cochran the subject of what provision would be allowed to me while I was caring for the property. We discussed that at the same time he was making up this agreement. When he decided to make a salary basis I told him what I would take and he would pay the grocery bills and expenses to go up. That is the necessary expenses from Fillmore. "What do you mean by necessary expenses. That would be livery hire and any cartage. Thereafter, during my employment on that property, until the property was sold to the Big Sespe Oil Company, I got groceries for use on the property, that is, for my supplies and for the maintenance of the men assisting me. I rendered bills to Cochran for those. I rendered him accounts, describing these accounts. He never made any objection to that. I rendered an account monthly for the account for livery hire, for taking me and the men to the property from Fillmore. He never made any objection to that. I worked on the road up there.

MR. COCHRAN: I assume the general objection will apply to everything that has any connection with the form of employment.

THE SPECIAL MASTER: As far as I can make

(Testimony of Thomas M. Hornada.)

it so. I want you to save all points. I think you had better save them.

MR. COCHRAN: That applies to everything under Mr. Cochran's employment, applies to everything in that line.

THE SPECIAL MASTER: Your point is that it is incompetent, irrelevant and immaterial.

MR. COCHRAN: Yes.

(Witness continuing.)

Regarding the details in the letter of July 19, 1915, written to me by Mr. Cochran saying, "as rapidly as conditions on property will permit you are to place the present wells in operation, improving them wherever possible." When I first went in there I took two men in there, and the two men and I cleaned up around the camp and got things in shape as quickly as we could and put one well on the pump within a week, and I got an extra man then and we put the other well on the pump. We had considerable work with that well, taking the tubing out—we had to pull the rods and tubing out both on this particular well before we got started again, and we did other things necessary to straighten up things to get it in operation. We repaired the pipe line; after I got the first well on the pump we had to fix the road; we had to get some materials and fix the road before we finally got the second well on the pump. We had the water line. In fixing up the road we made some fills that were washed out in the canyon. We removed some rocks

(Testimony of Thomas M. Hornada.)

off some grades and we also had to rebuild the water line so we could get water in the camp. I was still employed on the 3rd day of March, 1917. I had been in communication with Mr. Cochran concerning the property up to that time.

March 3rd the roads were not in very good condition on account of the recent rains having washed out again and they were in pretty bad condition. We had some pretty heavy rains up there the latter part of January, 1917, and then later we had pretty heavy rains in February that did more damage but had not been repaired yet. When the Big Sespe Oil Company purchased the property March 3rd, 1917, I continued on the property. During the years 1915, 1916 and part of 1917, there was a lead line that ran from the tanks onto the Kentuck property or right to the Kentuck tanks. There was a water line that came down the canyon from the north canyon and supplied the water down at the camp. There was the lead lines of the oil from the wells to the tank. There was the gas lines from the wells to the pumping plant.

Q. We will save asking questions, if in general terms you would tell us what kind, just the size of it.

MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

Well, we will take the lead line, the oil line that runs from the tank to the Kentuck tank. That line

(Testimony of Thomas M. Hornada.)

is 2530 feet long. That line has never been changed. It is in 2 in. black pipe. The oil line from the wells to the settling tank is 744 ft. The gas line that leads from the wells to the pumping plant is 607 ft. of 2 in. gas pipe. The steam lines that run from the boiler to the engines is 404 ft. of 2 in. pipe. The water line that runs from the canyon down to the tanks, that is the upper canyon, is 336 ft. of 2 in. black pipe. The loose pipe that is not in position, 140 ft. that lies by No. 3, and 160 ft. that is lying loose in the lower end of the canyon close to what we call the oak tree, 2 in. black pipe. We have 1200 ft. of tubing, in No. 3, 1100 ft. in No. 4, 800 ft. in No. 1, 850 ft. in No. 2. There is 220 ft. of 2 in. Redding tubing that lies at No. 4 not in use. There was a derrick at No. 1. There was a derrick at No. 2. I have described all the tubing. As to derricks, there was a derrick and rig at No. 3, a derrick and rig at No. 4, there were two drilling engines, one 20 H. P. Foos gas engine and pumping plant supposed to be equipped with stuff to run it, two wooden tanks of 297 barrels each, three galvanized tanks of 25 barrels each. I have a memorandum here of the last inventory that I have made of that, 4000 ft. of $\frac{5}{8}$ in. sucker rods. Each one of those four wells had a working barrel attached on March 3, 1917. There was 2000 ft. of $\frac{7}{8}$ in. drilling cable and about 1500 of $\frac{5}{8}$ sand line. There were four Crown pulleys, three pump jacks. There was a 25 H. P. boiler, one string of tools, two extra boilers,

(Testimony of Thomas M. Hornada.)

floor circle and jack, the cables that run from the jacks to the pumping plants on the three wells, blacksmith shop and tools. There was a lot of extra tools in the way of wrenches and pipe, cutters, dies, picks and shovels. There was a camp house and bunk house, a four-room camp house and two-room bunk house. I have been connected with the business of producing oil for something over ten years. During that time I have purchased the various articles mentioned in the list of items that I have given here for use in pumping wells and operating oil wells. I was familiar and I am familiar now with the market values of the various items of property such as you have mentioned in the list, you have given us in the neighborhood of the place where this oil property was situated in March, 1917.

Q. Will you state what, in your opinion, was the reasonable market value on that date at that place, of the 2530 ft. of 2 in. black pipe which was a lead line to the Kentuck claim.

MR. COCHRAN: Objected to as irrelevant and immaterial, also as having no foundation.

THE SPECIAL MASTER: I will let them go ahead with the understanding it will be connected up.

MR. COCHRAN: I object to it. I say they have never laid a foundation.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: Proceed to show the values of the different properties.

(Testimony of Thomas M. Hornada.)

A. That line laid down in the position that it was in at that time would have cost 21 cts. a foot, that being the reasonable market value of that property at that time and place. The reasonable market value of the 336 ft. of 2 in. black pipe used in the water line, the steam line, the gas line and the oil lead line at that time and place would all be the same price, 21 cts. a foot. 21 cts. a foot is the reasonable market value of the 744 ft. of lead line from the wells to the settling tank. The reasonable market value at that time of the 607 ft. of 2 in. gas pipe was 21 cts. a foot. The reasonable market value at that time of the 404 ft. of 2 in. pipe on the steam pipe from the boilers to the engine was 21 cts. a foot. The reasonable market value of the 140 ft. of loose pipe by No. 3, 2 in. pipe, 20 cts. a foot. Item No. 7, 160 ft., the same price. The reasonable market value of the tubing in No. 3, 1200 ft., 27 cts. a foot of the 1100 feet in No. 4, 27 cts., of the 800 ft. in No. 1, 27 cts., 850 ft. in No. 2, 27 cts., of the 220 ft. of 2 in. Redding tubing, loose, in No. 4, 35 cts. a foot. The reasonable market value of the derrick at No. 1 on March 3, 1917, was \$125. The reasonable market value of the derrick on No. 2 was \$125. The reasonable market value of the derrick and rig on No. 3 at that time was \$1700 including rig irons. The reasonable market value of the derrick and rig at No. 4 at that time was \$1500, and that included the rig irons. In addition to the derricks and rigs and the casing in the ground or the tubing in the ground on

(Testimony of Thomas M. Hornada.)

the four wells there was the tubing and the rods. No. 4 had a drilling line of 2000 ft. I think I have given you that. That is the $\frac{7}{8}$ drilling cable. There was only one of those and it was in No. 4, and the reasonable market value on March 3, 1917 was \$300. The reasonable market value of the 1500 ft. of sand lines was then \$120. In addition to the tubing, derricks and rigs, the rig irons and drilling cables, there was in No. 4 a string of tools, what we term a full string of tools. The reasonable market value of those at that time was \$250. There was a floor circle and jack at No. 4, and the reasonable market value of that at that time was \$35. There was, in addition to the casing, all in the ground, in addition to 1200 ft. of tubing in No. 3, 1100 feet in No. 4, 800 ft. in No. 1, 850 ft. in No. 2, there was a string of $9\frac{5}{8}$ in. casing and $7\frac{5}{8}$ in. casing and $5\frac{5}{8}$ in. casing and $4\frac{1}{2}$ in. casing in each of the wells. In No. 1 there was $9\frac{5}{8}$ in., $7\frac{5}{8}$ in. and $5\frac{5}{8}$ in. casing.

THE SPECIAL MASTER: Do you mean on March 3, 1917?

MR. ROBINSON: Yes, sir.

In each well there was approximately $9\frac{5}{8}$ in. down to a certain point, $7\frac{5}{8}$ in. to a certain point, and $5\frac{5}{8}$ in. to a certain point and so on. It cost different prices according to the different diameters. The reasonable market value of casing in No. 1 was \$1800. In No. 2 about the same. Regarding the size, it is greater at the top, smaller at the bottom. The market

(Testimony of Thomas M. Hornada.)

value of the casing in No. 3, $9\frac{5}{8}$ in., $7\frac{5}{8}$ in., $5\frac{5}{8}$ in., $4\frac{1}{4}$ in., March 3, 1917, was \$2200. The reasonable market value of the casing in well No. 4 on that date, same grades of casing as No. 3, was \$2200. I do not think there is anything else below the ground in any of those four wells that I have not mentioned. The reasonable market value of the two drilling engines which I have mentioned on March 3, 1917, was \$250 apiece. The reasonable market value of the 20 H. P. Foos gas engine on March 3, 1917, was \$400. The reasonable market value of the pumping plant which I have mentioned on March 3, 1917, was \$1500. The reasonable market value of the two wooden tanks of 297 barrels each on March 3, 1917, was \$150 apiece. The reasonable market value of the three galvanized tanks of 25 barrels each on March 3, 1917, was \$25 apiece. The reasonable market value of the 4000 ft. of sucker rods $\frac{5}{8}$ in. on March 3, 1917, was 8 cts. a foot. The reasonable market value of the four working barrels, one in each of those wells on March 3, 1917, was \$22 apiece. The reasonable market value of the four Crown pulleys was \$20 apiece. The reasonable market value of the three pumping jacks was \$25 apiece, of the 25 H. P. boiler, \$125, of one of the extra bailers was \$30, of the other was \$35, of the cables from the jacks to the pumping plant, estimated price, was \$50 for all three cables. The reasonable market value of the blacksmith shop, outfit and equipment was \$500. The reasonable market value of the extra wrench,

(Testimony of Thomas M. Hornada.)

pipe cutters, dies, picks and shovels, on that place at that time was \$250. The reasonable market value of the four-room camp house was \$600. The reasonable market value of the two-room bunk house was \$400. I left out four gas lines from the wells to the pumping plant.

MR. ROBINSON: 607 ft., he gave at 21 cts. a foot.

I was present at the time, when the personal property of the Pacific Crude Oil Company was sold, February, 1917. The sale was held by the deputy sheriff in Ventura county on the property of the Pacific Crude Oil Company. Those items of personal property which I have described this afternoon in my testimony were pointed out at that time by the deputy sheriff to the persons present as the things he was about to sell and those were in the ground, were described by him and at that time it was bid for all told what I would call a blanket bid. Only one person bid at that time, Alton M. Cates was the man that made the bid, one of the attorneys of record in this case for the Big Sespe Oil Company.

Q. Do you recall what he said when he made his bid?

MR. COCHRAN: Objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: You may retain the objection.

MR. COCHRAN: Exception.

(Testimony of Thomas M. Hornada.)

MR. ROBINSON: Q. When he bid, what did he say?

A. He said that on behalf of his client, the Big Sespe Oil Company, he bid.

Q. Do you remember how much he said he bid?

MR. COCHRAN: Same objection.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

A. \$300, I believe.

Q. What did the deputy sheriff say in response to that?

MR. COCHRAN: The same objection.

THE SPECIAL MASTER: Same ruling.

MR. COCHRAN: Exception.

MR. ROBINSON: Q. What did he say?

A. He says, "\$300."

That is what the deputy sheriff said, he said, "Am I offered any more for this property?" He says, "\$300 once, \$300 twice, \$300 sold." He said, it was sold to the Big Sespe Oil Company.

MR. ROBINSON: We offer this certificate of sale of personal property.

MR. COCHRAN: We move to strike out all the testimony of Mr. Hornada as to this sale and as to this certificate. We object to it as immaterial and irrelevant, and if Your Honor please, I call your attention to the language of this certificate. The sheriff sets forth in this certificate that he is directed by the execution which has been handed to him to satisfy

(Testimony of Thomas M. Hornada.)

a certain judgment out of the personal property of the defendant, Pacific Crude Oil Company. Then if such personal property cannot be found, then out of the real property of the defendant, Pacific Crude Oil Company. And then the certificate goes on to say that the sheriff has sold to the Big Sespe Oil Company for \$300, "All right, title and interest of the judgment debtor, Pacific Crude Oil Company, in and to the following described personal property." They sold or attempted to sell the real property which is involved in this suit under the same judgment, and under the same execution that is referred to in that certificate of sale. The whole thing was threshed out before Judge Trippet; as you will see by his interlocutory decree he found that the title to this property was not in the Pacific Crude Oil Company, the interlocutory decree in this action says distinctly the legal title of this property is in Cochran as trustee.

(Here ensued further discussion taken by the reporter which was expunged from the record.)

THE SPECIAL MASTER: As an accounting officer, I think I will take it for what it is worth.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: Exhibit No. "B", Defendant's.

MR. ROBINSON: Your objection does not go to the ground that it was not executed by the sheriff of Ventura county?

MR. COCHRAN: No. Plaintiff desires to have

it appear that the original shows that the same was never filed or recorded in any public office.

(Said document, Defendant's Exhibit "B", is in words and figures as follows, to-wit:)

SHERIFF'S OFFICE)
COUNTY OF VENTURA) ss.
STATE OF CALIFORNIA)

I, E. G. McMartin, Sheriff of the County of Ventura, State of California, do hereby certify that under and by virtue of an execution issued out of the Superior Court of the County of Ventura in a certain action lately pending in said court at the suit of Big Sespe Oil Company a corporation against William H. Cochran *et al.*, defendants, attested the 2nd day of February A. D. 1917, by which I was commanded to make the sum of \$17,640.50 with interest and costs to satisfy the judgment in said action out of the personal property of defendant, Pacific Crude Oil Company, a corporation, if sufficient personal property could be found, as more fully appears by the said writ, reference thereunto being here made, I have levied on, and on the 17th day of February, A. D. 1917, at 11 o'clock A. M. at the Pacific Crude Oil well in the - - - in said County of Ventura, duly sold at public auction according to

(Testimony of Thomas M. Hornada.)

law and after due and legal notice to Big Sespe Oil Company, a corporation, who made the highest bid therefor at such sale for the sum of \$300 in lawful money of the United States, which was the whole price paid therefor, all the right, title and interest of the said judgment debtor, Pacific Crude Oil Company, a corporation, in and to the following described personal property, to-wit: four (4) oil wells, including tubing, casing, rods, pumps, pumping jacks and derricks; one pumping plant including 20 horse-power "Foos" gas engine; one (1) cook house, one (1) bunkhouse, one (1) engine house, one (1) blacksmith shop, two (2) 300 barrels wooden tanks, one (1) 25 horse-power steam boiler, two (2) 12 h. p. Bovard & Sefang steam engines, one string 5- $\frac{5}{8}$ " oil well drilling tools, one-half mile 2" oil pipeline, $\frac{1}{4}$ mile 1" and 2" water pipeline, one (1) cast iron cooking range, one (1) lot of miscellaneous cooking utensils, one (1) lot of minor small tools.

E. G. McMartin Sheriff

By R. N. Haydon, Under Sheriff.

Dated at Ventura, California, this 17th day of Feb. A. D. 1917.

(On back of cover): E. G. McMartin, Sheriff of the County of Ventura to Big Sespe Oil Company. Sheriff's certificate of sale of personal property Dated Feb. 17, A. D. 1917."

Then at the conclusion of that ceremony, or of that sale, which I have described, where the deputy sheriff

(Testimony of Thomas M. Hornada.)

was present, the Big Sespe Oil Company took possession of the property that I have descibed. The Big Sespe Oil Company continued to hold and keep control of this property from that time on.

BY THE SPECIAL MASTER:

The Big Sespe Oil Company is in possession of that property now.

MR. COCHRAN: I think we object to that as calling for a conclusion of the witness.

THE SPECIAL MASTER: As to what constitutes possession?

MR. COCHRAN: Yes.

THE SPECIAL MASTER: I will take it as meaning they are using it and used it in the business of operating the wells.

MR. COCHRAN: Exception.

BY MR. ROBINSON:

From the time of this sale there was no other person using the property, real or personal, up there excepting the officers and employees of the Big Sespe Oil Company. There is no other person using any of this property or having it in control, holding it or exercising the use of it except officers of the Big Sespe Oil Company.

Q. Between the 3rd day of March, 1917 and the time of the fire in October, was there any repairs made on any of the machinery, derricks or equipment there at that place?

MR. COCHRAN: Objected to, too general. We want to make the specific objection that this calls for

(Testimony of Thomas M. Hornada.)

the conclusion of the witness. This witness is a perfectly intelligent man and we have threshed out all these questions which are under discussion. He has had the opportunity in the examination which the complainant made, to say whether things were for this or that or the other thing. Now he is going to be permitted, as I suppose, to testify as to whether certain things were or were not repaired. We object to that. We have no objection to his testifying what he did, but to testify that what he did was a repair, I say would be objectionable and unfair.

THE SPECIAL MASTER: Your objection is too fine. I am going to have him determine what repairs are. He will have to go ahead and describe what things are repairs and I will do my best to determine what are and what are not repairs.

MR. COCHRAN: Exception.

A. Yes, sir.

Q. Just state what was done during that period, giving the details of what was added to it or repaired.

MR. COCHRAN: This question emphasizes what I was saying. He asks what was added to it, or repaired—what was added may be improvement.

THE SPECIAL MASTER: I will sustain the objection as to "what was added to it."

MR. ROBINSON: Exception.

The repairs were in fixing up the wells. We had to put in new working barrels in No. 4. That was between March 3rd and the fire.

(Testimony of Thomas M. Hornada.)

Q. What did it cost? You may save your exception.

A. \$21.75. If I remember, this particular working barrel.

BY MR. ROBINSON:

That was not the cost on the ground up there. The freight and cartage would be added to it. On the property, the freight and cartage from Los Angeles to the wells on the working barrels would be \$3.00. We bought an engine, to repair the engine we had, a Foos engine, 20 H. P. It was used to replace the engine that was on the property. That is, we replaced it with the exception of the fly-wheels and bed plate. The cost of that was \$106, delivered at Fillmore and the cartage on that engine was \$5.50. Between those two dates we also repaired the pipe line. That is, the oil line. We had to repair that several times, but the first time we put it in condition was more work than before. We also repaired the water lines. On the oil line, I think we used three new unions, one flanged union and two unions of the ordinary sleeve pattern. That flange union cost \$2.32 and I do not remember what the others were now. Nothing was used on the water line in making the repairs.

BY MR. MARTIN:

All we put on the water line was just labor and that is included in the statements.

BY MR. ROBINSON:

I cannot call to mind any other repairs before the fire. I might refresh my mind from the bills. There

(Testimony of Thomas M. Hornada.)

was considerable work done on roads, that road that leads from the wells down to the canyon. We repaired that several times. That is the only road we have got up there. That is the same road on which I have done a thousand feet of work recently. On March 3rd, No. 1 and No. 2 was off the pump and have been off some time prior to that, and No. 3 went to pumping when we started to pump and No. 4 had to be worked on dry state, had to be pulled out and put on new working barrel.

Q. Will you state whether or not the various articles which you have described and for which you have given us the market value on March 3, 1917, were necessary and required in the operation of this property as an oil property.

MR. COCHRAN: Objected to as calling for a conclusion of the witness; it has not been shown, yet, from our standpoint, that it is material or relevant.

THE SPECIAL MASTER: Witness is qualified as an expert—save your point.

A. Yes, sir.

Whereupon an adjournment was taken until the following day, June 15, 1920, at 10 o'clock A. M.

June 15, 1920.

10 o'clock A. M.

T. M. HORNADA,

on witness stand.

BY MR. ROBINSON (Continued):

The fire of October, 1917, wiped out everything

(Testimony of Thomas M. Hornada.)

there was at the four wells. After the thing cooled we got men at work in there cleaning, so we could put up new stuff. We had some roads to work over before we could get lumber in there and we bought them a bill of lumber and nails and we put up a derrick at No. 3 and also a derrick at No. 4. We bought material for the calf wheels to use in place of bull wheels in pulling the rods and tubing out of the wells. We also had to get timbers for engine blocks and we had to buy babbitt for the babbitting for the engines that had been in the fire. We had some extra work on the engines in cleaning those up and we also had to buy material, rope, 2 in. bull rope for both rigs. We had to buy some extra cable. We had to buy some extra two inch pipe for pulling the tubing that was in the wells. The first item on Schedule "C" is Kerckhoff-Cuzner Lumber Company. That was entirely for the lumber that was used, and two calf wheels used on No. 3 and No. 4. The calf wheels were used in place of a set of bull wheels. We connected up our engine direct with the calf wheels and pulled direct from the engine in place of pulling off a band wheel destroyed in the fire. Item No. 2, Oil Well Supply Company was for ropes for bull ropes and babbitt and some other items in that one bill that was used in No. 3 and No. 4 that was used for replacement after the fire. The Haywood Lumber Company of two bills was for lumber of the various sizes that it took to replace the derricks and engine blocks in No. 3 and No. 4 after the fire.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

The two items of the Haywood Lumber Company are all in one. The Oil Well Supply Company, \$134.07, February, 1919, included in that about 230 feet of 2 in. Redding tubing. That was used for fishing out the tubing that had dropped in No. 3 and No. 4 during the fire. On March 28th, Oil Well Supply Company \$1.76 was for some extras we had to have—the bill will show what that little item was for—but it was something we had to have to complete our work. Item December 9th, Smith-Booth-Usher Company, \$17.60. That was material that we had to use in repairs on the gas engine that is in the pumping plant. That was not particularly for damage caused by the fire but actual consequence of an engine playing out once in a while. The items of January 21st, Smith-Booth-Usher Company, \$15.40—items for repairs for the gas engine including babbitt for babbitting boxing on the engine—bearings. January 12th, Harper & Reynolds, \$32.45, for Giant powder, or dynamite, was used for the construction of a road. The road where the work was got in such bad condition that we had to make a change of the road. We could not move the large boulders and rock that had rolled in; we had to go higher up along the side of the canyon and that took considerable work, and some large rock had to be blasted out. This road was started from what we call the "oak tree" and was built up right along what we call the "high water mark," up along the side of the canyon.

(Testimony of Thomas M. Hornada.)

Q. At the time you were using this Giant powder, was there any accessible road, any traversible road?

MR. COCHRAN: Objected to, calling for conclusion of the witness; let him state what the conditions were.

SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

A. It was an impossibility to get up to the canyon only a-foot, and it was a difficult job even to go a-foot, climbing over the rocks and places where the wash-out was, and it was absolutely necessary to build some kind of a road in there so that we could get up and from the wells, and especially to get stuff to the wells so that we could use it. The next item, Smith-Booth-Usher Company, July 10, \$4.23, was for engine repairs for Foos engine for the pumping plant. In those items of Fairbanks-Morse Co., \$4.62, for frames and pins for a 14-in. Trimo wrench—that item includes a red-seal dry cell, and No. 9 coil 14-in. wire—that was used in rewiring the battery and the cells were used in the battery in starting the Foos engine, in the power plant. The bill of \$2.81, includes a 12-inch monkey wrench and movable jaws for a 14-in. Trimo wrench, and can of Vulcan valve grinding compound used for grinding the valves in the gas engine. The 12-in. monkey wrench was to replace a monkey wrench on which I jerked the jaw off one day I got too stout. The movable jaws for the Trimo wrench was for repairing the Trimo wrench, which was used for twisting pipe and

(Testimony of Thomas M. Hornada.)

things like that around the place. It was absolutely necessary to keep the machinery in repair. E. A. Clampitt and Company, \$29.65, was for some $\frac{3}{4}$ -in. pipe. We ran out of water in the upper canyon and had to bring a water line—we had to establish a water system in the lower canyon to pump the water up here so that we could have it put into our circulating tank for our engine—that was for $\frac{3}{4}$ -in. pipe and the fixtures. I cannot tell what the item, Oil Well Supply Company, \$8.64, is for, without having the items. August 31, Smith-Booth-Usher Company, \$67.38, that includes a $1\frac{1}{4}$ H. P. Hercules engine of \$60.00, and there is \$7.38 for some babbitt, called “copper hard babbitt.” I think in that same bill was some nickel babbitt. This nickel babbitt and the copper hard babbitt was used in re-babbitting the bearings in the Foos engine in the pumping plant. The \$60 is for a gas engine which was used for pumping this water from the lower canyon up the hill in the circulating tank. We was out of water, we had to get water from down below to keep our engine going. November 21st, Standard Oil Company, \$7.30, is for gas engine oil that was used in the plant for the pumping plant in the Foos engine, in the pumping plant. That about November 21, 1919, wells No. 3 and 4 were in good working condition.

Q. Will you state the general conditions on the property at the time when the project of putting up a small derrick on No. 1 and building the new derrick for what is called “No. 5” were under consideration?

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: Objected to, incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

A. We talked the matter over there for increasing the production, and the other wells kept going down a little bit all the time—No. 3 and No. 4, and we made up our minds we could put a little derrick on No. 1 and put it in working order and increase the production to whatever extent we could get out of No. 2. No. 3 and No. 4 were not pumping as much oil as they had formerly, and we figured we could put No. 1 on the pump and get some production from that that would increase the production there and, then, we decided to start a new location, a new well, in order to get a good production. Between March 3, 1917, and November, 1919, the casing, tubing, rods and other apparatus in the ground in No. 1 and No. 2 were not used.

Q. If you had taken them out of the ground what would have happened?

MR. COCHRAN: Why a hypothetical case? They were in the ground, and I don't think it fair to go into hypothetical questions; objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

A. If we had pulled the casing out, and tubing, the stuff out of the two wells they would naturally have caved in. If we had taken them out and had to put

(Testimony of Thomas M. Hornada.)

them back, we would have a lot of fun getting them back. By leaving them in the ground the well would naturally be in the same condition, outside of a natural filling up that occurs. No. 1 and No. 2 were not working at that time. We left them in condition for any future development we might attempt, but if we had taken and pulled the material all out of these wells, they would naturally cave in, and we would have had a very difficult job to put it back in again. That would involve redrilling the well. By filling up, I mean filling up inside the casing, and seepage inside the casing. In order to put the wells back in working condition, if we left them as they were it would have been necessary to pull the rods and tubing all out and run a sand pump and get as much of this sediment out of it as would have been possible without putting up a regular rig and re-drilling. It could have been done by using a sand pump—you would get more or less sediment out of the well. You could put a well in operation in that manner without extra expense of a regular drilling outfit. There was no hole sunk in No. 5 in November. In locating the rig known as No. 5 and designated in this proceeding as No. 5, the first idea in getting another hole down there was for as little expense as possible and therefore we picked a location on the road and we picked a location that we figured that would be the most shallow of any of the territory we had in order to get a well down with as little expense as possible. There was no way No. 1 could have been put on

(Testimony of Thomas M. Hornada.)

the pump again without the erection of the derrick that I have described. Without tearing down No. 3 and 4 there was no way that No. 5 could be started without building the derrick or without any material. The item of November 21, 1919, \$703.32, is lumber bill from Curvan Brothers. That lumber was used in the erection of No. 5 and also in putting up the little derrick over No. 1.

BY MR. COCHRAN:

By erection of No. 5 I mean building the derrick and putting the rig timbers in place. The actual work of building No. 5 began the latter part of 1919. By that I mean December.

BY MR. ROBINSON:

The work of building No. 5 was begun in December, 1919. No. 1 derrick is all complete with the exception of putting the crown block on. The No. 5 derrick is completed outside of the crown block. The rig timbers are all in place, the bull wheel is in place, the band wheel is not in place, but practically finished, it isn't quite finished yet, but it is likely to be finished in a little while and put in place. I attended upon the trial of this action in the United States District Court. About the time I came down to the trial of this case this work had proceeded up to the point I have spoken of. At the foot of Schedule "D" the item, "L. W. Williams, labor, \$232; Ferdinand Jenson, labor, \$159.50," being unpaid bills for labor. Were for work done by those two men on these two derricks. I assisted in making

(Testimony of Thomas M. Hornada.)

up schedule "D" and went over the items and examined them. I have been all over the items of that schedule. The item of April 20th, 1917, Star Stables, voucher No. 1, down to and including item of March 17, 1920, Lee A. Phillips, voucher No. 111, \$17.08, and I can state that those items have been paid by the Big Sespe Oil Company. The last item of Schedule "D," L. A. Clampitt bill, \$96.00, was for teaming hire. In the schedule just mentioned, the item T. M. Hornada, back pay, has not been paid at all. I first spoke with L. A. Clampitt, president of the company, about the sums involved in making up that amount of money, the question of additional or back pay. That was in the latter part of December, 1918. L. A. Clampitt was general manager of the company at that time.

MR. COCHRAN: I object to the designation as general manager—calling for a conclusion of the witness.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

I was originally employed by L. A. Clampitt to work on the property for the company. After the purchase of the property March 3, 1917, L. A. Clampitt, on behalf of the Big Sespe Oil Company, employed me to work on the property. I think that was the day of the sheriff's sale. I had a conversation concerning the amount of compensation I should have for my services.

Q. What was said?

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: Objected to, already testified to by this witness, and objected to because prolonging the reference unnecessarily by mere repetition.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: Exception.

A. He says—he asked me—how much I would go up there for—what I would go up and pump the wells for—and I told him that I would go up and pump the wells for \$100 a month, and they was to pay my expenses after I landed at Fillmore—they was to pay grocery bills and what other expenses I might have. He said, “All right.” That amount was paid me from that time on. The next time I had any conversation with Clampitt concerning the compensation I should receive while working up there was about the first of June, 1917. I then told him that I would have to have more money. I could not make ends meet the way things were, and so he said he would have a meeting of the board of directors called and see if they could advance my salary, and he went ahead then and asked for a meeting of the board of directors, and they agreed at that meeting of the board of directors to pay me \$165 a month.

THE SPECIAL MASTER: Strike that out.

MR. ROBINSON: Yes.

I had a conversation with Mr. Clampitt outside of the meeting of the board of directors concerning my salary. At his office, 520 American Bank Building, some time in June, 1917, I told him that I was going

(Testimony of Thomas M. Hornada.)

to have more salary and we talked about the amount of salary and he finally said that he didn't want to allow me over \$150 a month, and I was holding out for \$165.00. That was all the conversation. I had a conversation with him later, after the meeting of the board of directors, in his office in the American Bank Building, in December, 1918. Only Clampitt and I were present. I approached Clampitt on the question of salary again and he said I was entitled to more money, and he said I was entitled to the schedule wages, but he said that he was a little hard up and wanted to know if I couldn't get along; and then, after they could make arrangements for more money or more production, I could have my money altogether in the future. He said he would allow me the pumper's wages and he would see that I got that much money. At that time pumper's wages were \$5.25 a day. That amount was mentioned at the time we had this conversation in the latter part of December, 1918.

Whereupon a recess was had from 12 M. to 2 o'clock P. M.

June 15, 1920,
2 o'clock P. M.

T. M. HORNADA resumed the stand and testified further as follows:

BY MR. ROBINSON:

In the last discussion which I had with Mr. Clampitt of which I was speaking this morning, something was said concerning the prevailing rate of pumper's wages.

(Testimony of Thomas M. Hornada.)

He asked me how much I thought I ought to have and I told him I ought to have pumper's wages, and he says, "How much is that now?" I says, "\$5.25 a day," and he says, "Well," he says, "The Big Sespe Oil Company will have to do similar to what other companies are doing." I then went on working for the Big Sespe Oil Company.

BY THE SPECIAL MASTER: That means for 30 days in the month, \$5.25 a day. Pumpers pump every day and they work only by the full month. That means days of actual work. If he goes away off on his own account and is away, then, he would lose the time, but when he makes arrangements for his pump, then, or if he is sent off on other business, that makes a difference in the time paid. The practice is to pay for thirty days at \$5.25 a day.

BY MR. ROBINSON:

Q. In speaking of the material that was on the ground at this property in March, 1917, you spoke of some loose pipe at No. 3, and loose pipe at the oak tree, and loose tubing at No. 4. Of what, if any, use was the loose pipe at No. 3, and the loose pipe at the oak tree, in the operation of this property?

MR. COCHRAN: You mean actually used; he has not testified to what is being actually used.

THE SPECIAL MASTER: He may answer.

MR. COCHRAN: Exception.

A. We used extra pipe when we have a break in the line and we have never taken this up from the lower

(Testimony of Thomas M. Hornada.)

end, and for the simple reason that the lead line from the tanks that runs out, when we sell the oil, is in a rather bad place, and rocks are continually breaking this line, and we keep some extra pipe down there for that purpose. The pipe at No. 3 was just simply extra pipe. It is always necessary to keep extra pipe on hand in case of a break-down for the purpose of making repairs and running the property.

BY THE SPECIAL MASTER:

There was 140 feet at No. 3.

BY MR. ROBINSON:

The quantity that we had there was necessary for reserve purposes in operating this property.

BY THE SPECIAL MASTER:

That was pipe at the oak tree.

BY MR. ROBINSON:

The amount there, 160 feet, was necessary for the operation. The first item of Schedule "B," "back taxes \$284.94," are covered by vouchers which I have. One is for 1915 and 1916. This seems to be a redemption of real estate amount \$157.80. It was paid March 14, 1917. It was paid by Alton M. Cates, attorney for the Big Sespe Oil Company. The other was for taxes 1916 and 1917, \$127.14. It was paid March 12, 1917.

THE SPECIAL MASTER: Any penalty?

MR. ROBINSON: Penalty \$10.80 plus \$116.34, \$127.42. We will offer that in evidence. (Defendant's Exhibit "C"—redemption; Exhibit "D"—tax bill.)

THE SPECIAL MASTER: No objection to the charge?

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: No.

BY MR. ROBINSON:

Item on Schedule "B," November 23rd, T. W. McGlinkey, county tax, \$151.20, the duplicate receipt. Is receipt for that amount paid.

BY THE SPECIAL MASTER:

I am familiar with a part of the tax payments that were made during 1919 by the Big Sespe Oil Company. I was familiar with the check book, referring to the stub checks on May 28th, 1919, the payment John P. Carter, taxes, \$39.32, is for internal revenue taxes. I am reading from the stub May 28, 1919, No. 393; from the entries there I cannot state what that tax was for. There was no increase in the stock of the Big Sespe Oil Company at or prior to that time. The last item of Schedule "B," dated February 23, 1920, "John P. Carter, income tax, \$267.87," was for income tax to the government for the amount of income of the Big Sespe Oil Company, and the only income the Big Sespe Oil Company had, was from the production of oil from this property. I have been engaged in the business of producing oil from land about eleven years. During that time I have been familiar with the operation of other properties besides the Big Sespe property under discussion here. I am familiar with the methods generally in use in the crude oil industry in Southern California, during the years 1917, 1918, 1919 and 1920, for estimating the rental or profit bearing value of oil property.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: You may save all your points and exceptions if you will take them generally. I am going to allow him to introduce this but subject to your objection and exception and saving all points.

MR. COCHRAN: Objected to, incompetent, irrelevant and immaterial. Also, on the ground there is no question of rental value involved in this accounting, and also on the ground witness has not been qualified as a witness to testify as to rental value; he has no technical value of property, and the witness has not been qualified.

THE SPECIAL MASTER: Would you like to examine him on his qualifications?

MR. COCHRAN: No.

THE SPECIAL MASTER: Answer the question.

MR. COCHRAN: Exception.

A. One-eighth royalty. By that I mean one-eighth of the net proceeds of the production. We arrived at one-eighth of the net proceeds of the production after taking out what oil we used on the property. We run the balance of the oil and what goes into the pipe line there we would consider that, there is where we figure from.

BY THE SPECIAL MASTER:

One-eighth of the run after it goes into the pipe line. I have had connection with some other company, The Rose Oil Company, for instance, that was back over the hill. What I know is that they operate their business from what they have told me from talks I have

(Testimony of Thomas M. Hornada.)

had with people interested or connected with that business. I have observed their operations of their property. I have observed the operation and am familiar by personal observation with the Kentuck property and have information received from persons in charge of the same. I have talked with men in the oil business about the leasing of oil properties a great many times. A great many times in the course of my dealings with the Big Sespe Oil Company, too. I have become acquainted with the facts concerning the leasing of oil properties during that period of time from talking with others.

BY MR. ROBINSON:

Assuming that the operator of the Big Sespe Oil Company owns and did own the apparatus, machinery and all the appliances used in pumping the wells on this property during the years 1917, 1918, 1919 and 1920, including the casing and tubing in the wells and that the owner of the fee to the real property did not own any of these articles, the reasonable value of the use of that property for the production of oil during that period of time would be one-eighth of the royalty, estimated in the manner I have previously described. Assuming that there is a piece of land, the description of which I have heard given to the other expert witnesses—Messrs. Snyder and Howe, being the same land described in the questions asked of them, situated about six miles from the town of Fillmore, County of Ventura, and State of California, on which there are two

(Testimony of Thomas M. Hornada.)

wells producing an average of about 700 barrels, two non-producing wells with casings in them, the oil produced being 20 gravity oil, and the casing, tubing, pumping apparatus including derricks and all the machinery, utensils and equipment used upon the ground belonging to the operator as distinguished from the owner of the land, the reasonable market value for the use, for the production of oil therefrom during the years 1917, 1918, 1919 and 1920, between March 3, 1917, and the present day, is one-eighth royalty estimated in the manner in which I have previously described. Twenty gravity oil was produced on this Big Sespe Oil Company property between March 3rd, 1917, and the present day.

MR. ROBINSON: We have here and will offer as supplemental to our account some bills for the months of March and April, 1920, together with the oil runs for those months. We will ask leave before the report goes in to supplement these by others, bringing it up to date, to be dealt with in conformity with the general theory adopted for the whole case—simply bring the production and current expense up to date.

THE SPECIAL MASTER: I think they ought to be submitted with the statement that “we hereby submit and file additional documents which show additional runs and expenses.”

MR. COCHRAN: You may say, “Hornada’s monthly statement for the months of March and April.”

MR. ROBINSON: That is all of our examination.

(Testimony of Thomas M. Hornada.)

MR. COCHRAN: Complainant moves to strike out all the testimony of witness as to any rental or other value of the land under the conditions which have been described in the various questions submitted to him; in other words, all his testimony as to the value of these lands under any of the conditions specified in the questions—we move to strike it out.

THE SPECIAL MASTER: Motion denied without prejudice to renew later on.

MR. COCHRAN: Exception.

THE SPECIAL MASTER: And without prejudice to you in any question you wish to ask him on cross-examination. Your contention is that the only evidence of repairs that are properly admissible are those made since March 3rd, 1917, upon such property that existed on the premises at that time?

MR. COCHRAN: Yes.

CROSS-EXAMINATION,

BY MR. COCHRAN:

I do not know how long Clampitt has been engaged in the oil business exactly; approximately 25 or 30 years. I consider Clampitt much better qualified to speak on the oil business than myself. Regarding my last conversation in December, 1918, that I had with Clampitt relative to myself, which was in December, 1918, I cannot fix the time in December, 1918, nearer than that. I was not in Los Angeles the forepart of the month. I remember distinctly I was not in Los Angeles at that time.

(Testimony of Thomas M. Hornada.)

BY THE SPECIAL MASTER:

I knew it was the latter part of December, 1918, because I knew that I had come down to spend Christmas. At that conversation about this salary of mine Clampitt said in particular that the Big Sespe Oil Company was hard up. He referred to the Big Sespe Oil Company and himself both. The reason he did not want to promise to have my salary increased at that time was not because the Big Sespe Oil Company was hard up. He said that both he and the company were hard up in December, 1918, and he said that was the reason he wanted me to wait. Referring to Exhibit 5 for identification, referred to several times as the "Day Book," on page 34, the entry "T. M. Hornada, Dividend Account," and the item of December 17, 1918, being dividend No. 4, at 30 cts. per share on 220 shares, \$66.00. I received that dividend. It is a fact that every other stockholder at that time also received a dividend in accordance with the respective stock holdings. It is a fact that according to this Day Book, that Clampitt at that time received \$489 on that dividend, that Doctor Mills received \$438.60, and I received \$66.00. Mrs. L. E. Greenfield, another stockholder, received \$7.20.

MR. ROBINSON: Objected to.

THE SPECIAL MASTER: Same ruling.

MR. ROBINSON: Exception.

BY MR. COCHRAN:

All these dividends as I have mentioned, were paid on December 17, 1918.

(Testimony of Thomas M. Hornada.)

MR. ROBINSON: We stipulate that the stock dividend was paid to all the share holders to the stock issued on the same basis Hornada got his.

MR. COCHRAN: Upon all the stock in the same ratio that Hornada got his.

THE SPECIAL MASTER: All right; it will be deemed so conceded.

MR. COCHRAN: Will you also stipulate that the 1630—

MR. ROBINSON: This whole examination is absolutely inadmissible on any theory of the law.

THE SPECIAL MASTER: I will let the witness answer; we will get along faster that way.

MR. COCHRAN: Didn't the 1630 shares, on page 30 of this day book, said to be the stock holdings of Clampitt, include the one share which is said to have been held by Mrs. Greenfield?

MR. ROBINSON: Objected to, incompetent, irrelevant and immaterial, not the best evidence, calling for hearsay.

A. That is my understanding that is the way it was.

MR. ROBINSON: I move to strike out the answer as incompetent, irrelevant and immaterial, utterly extraneous and having no foundation and not the best evidence.

THE SPECIAL MASTER: I think it answers the question; he may have it.

MR. ROBINSON: Exception.

(Testimony of Thomas M. Hornada.)

BY MR. COCHRAN:

It is my understanding that it is equally true as to the 1462 shares said to have been held by Doctor I. D. Mills, that it includes one share held by his wife in order to qualify her as director.

MR. COCHRAN: I am going to read the following entry. I am going to read them in evidence. The next payment of dividends to Clampitt, as it appears on page 30, was February 11, 1919, dividend No. 5, \$652. Under the same date to Doctor Mills, \$584.80. Under the same date, to T. M. Hornada, \$88.00. Like payments to the two Greenfields on their holdings.

BY MR. COCHRAN:

The other day in speaking of this day book I said that it did not correctly state the holdings of stock of the respective stockholders at the time, as to which I was being questioned. It is a fact that the only difference in the statement of stock holdings as set forth in this day book of the various stockholders and what they are at the present time, is by the acquisition by Clampitt of 600 shares of this stock from Dr. Mills between April 21, 1919, and June 18, 1919.

Mr. COCHRAN: If Your Honor please, there are repeaters in this day book to other dividend payments and I am going to ask leave to read them in the same as I have this last one. The next one comes in about April, 1919, and another comes in June, 1917, that is all that shows on the book, so that the dividend payment will be completely shown on the records, I would like to have those read in.

(Testimony of Thomas M. Hornada.)

A. April 2nd, 1919, \$652.00. Next dividend to Clampitt, June 18, 1919, \$669.00; next to T. M. Hornada, April 21, 1919, \$88.00; and June 18, \$66.00. Doctor Mills, April 21, 1919, \$584.80; June 18, 1919, \$258.60. I would like to read into the evidence two entries from the day book under the account of T. M. Hornada.

MR. ROBINSON: That book could not all go into the evidence because it contains matters not pertinent.

THE SPECIAL MASTER: My custom has been to deem the books in evidence and any argument therefrom to which the court's attention is called will be considered a part of the findings and may be referred to in the argument. You may read it.

BY MR. COCHRAN:

On page 16 of this day book which appears to be the account of the Big Sespe Oil Company with me the item of payment to me August 15, 1918, to cash, check No. 351, on back salary, \$88.00, is not the one we had the argument over the other day. This is the \$88.00 that appears in the account to me for back salary and on the same page this entry of October 15, 1918, to cash, check No. 358, back salary \$33.00, is the \$33.00 which appears under even date in the account.

MR. COCHRAN: Then, if Your Honor please, I would like to read into evidence on page 17, which is the opposite side of this account of Hornada, "July 2, 1918, to back salary from March 4, 1917, to June 30, 1918, \$975.00"; and then the only other entry appears

(Testimony of Thomas M. Hornada.)

on page 22, under date of December 16, 1918, which reads, "to cancelling of back salary, \$854." The \$88 and the \$33 and the \$854, the entire back salary is cancelled by the entries in this book.

SPECIAL MASTER: Is that \$88 credited in the account as something to be paid hereafter as having been paid in the account?

MR. COCHRAN: Yes.

SPECIAL MASTER: Then the book credits and shows it was paid?

MR. COCHRAN: Yes. I want to put in the other entries to show the cancellation. In other words, they paid \$121.00, and he was credited with \$975, \$121, and \$88 and \$33. Take \$121 from \$975 and it leaves \$854, which shows that it was cancelled. In order to make the book balance, he says, to cancel back salary. In other words, the back salary was entirely closed out.

SPECIAL MASTER: He had already had it, hadn't he?

MR. COCHRAN: No; he had only \$121 and then they cancelled it, as they called it.

SPECIAL MASTER: That would cancel the \$854?

MR. COCHRAN: Absolutely, and that followed the cancelling resolution of December 17, 1918, which said he could have the \$121 by cancelling the balance. It is pertinent to what is already in evidence. I would like to put in evidence similar entries as to the alleged payment of back salary to Dr. Mills and Mr. Clampitt. Of course, if they are going to object technically, I am

(Testimony of Thomas M. Hornada.)

going to have difficulty in doing it, but I think it is proper for us to read the back salary account of Clampitt and Mills.

SPECIAL MASTER: You may proceed under your own lines.

MR. COCHRAN: Clampitt account, on page 12 and 13 of the day book, there appears the following entries: August 15, 1918, to cash on back salary, \$652; October 15, 1918, to cash on back salary, \$244.50; December 16, 1918, to cancelling of back salary, \$2,103.50; making a total of \$3,000.00.

Examination by Mr. Cochran continued:

The signature, "T. M. Hornada," to the minutes, "Los Angeles, California, December 16, 1918. We, the undersigned, being all of the directors of the Big Sespe Oil Company, a corporation, do hereby consent that a special meeting of the board of directors of said corporation be held at the office of said company, room 506 American Bank Building, northeast corner Second and Spring Street, in the City of Los Angeles, County of Los Angeles, State of California, on Monday, the 16th day of December, 18, at 10 o'clock A. M., and we do hereby waive all notice of said meeting." Signed, "L. A. Clampitt," "Fannie Clampitt," "Elizabeth H. Mills," "Dr. I. D. Mills," "T. M. Hornada," is my signature. Clampitt presented a bill for the team hire charged in Schedule "D" at \$96.00, said to be due L. A. Clampitt for team hire. I have the bill here. I got hold of the bill since this trial came up. The two horses and driv-

(Testimony of Thomas M. Hornada.)

ers referred to in this bill dated October 1st, 1919, which says, "To two four-horse teams and drivers, 4 days at \$12 each, total \$96.00." Were used on the property in September, 1919. Part of it was for hauling a tank up there that was put up, and part of it was for one four-horse team one day connected with a grader working on the road. We had two teams, four horses each, for four days. It took the two four-horse teams a day and a half to haul the tank up to the property from over toward Piru. I have a day and a half accounted for for both teams. We used the teams, eight mules and two wagons. The tank was not in one piece. That is a gauging tank set up by the oak tree. We used the four-horse team on the road one day. I do not just recall to my mind now what time was put in. That is all the information I can give you about that charge now. I know those two items are all right.

THE SPECIAL MASTER: I am inclined to allow the bill for \$96.00.

BY MR. COCHRAN:

I have produced today the agreement of the Turner Oil Company about which I testified at the last hearing. This paper which you handed me is a copy of it. Since the last hearing I have not looked into the question of these alleged loans from the California National Bank and the Farmers' and Merchants' National Bank, so that I can testify to that. I can only testify as to just what appears in the day book or the check stubs.

Hearing of June 15, 1920. (Page 83 of the record.)

(Testimony of Thomas M. Hornada.)

MR. ROBINSON: We will stipulate that on March 12th, there was \$1,000 borrowed by the Big Sespe Oil Company and on March 12th paid out by check No. 251 to cover a fee to Alton M. Cates, \$666.39, back taxes on this property \$284.94, which is our first item in our account, and Sheriff's costs of \$48.67, making a total of \$1,000 received by the company on that date and paid out on the same date.

THE SPECIAL MASTER: What leads up to the \$666.39, relating to the \$1,000.00?

MR. COCHRAN: March 12th check No. 251.

THE SPECIAL MASTER: Then what follows?

MR. COCHRAN: A. M. Cates fee.

THE SPECIAL MASTER: Does it mean check No. 251 is Mr. Cates' fee?

MR. ROBINSON: Mr. Cates probably disbursed the additional amounts.

THE SPECIAL MASTER: Is the check for \$1,000?

MR. ROBINSON: Yes.

THE SPECIAL MASTER: That book is deemed in evidence so far as I am concerned for all the issues raised.

BY MR. COCHRAN:

I say it was not for the benefit of the company. It was not for the benefit of the property, but for Mills and Clampitt. It appears here under date of March 12, 1917, "borrowed from California National Bank, \$1,000," and opposite there appears the following en-

(Testimony of Thomas M. Hornada.)

tries, under March 12, 1917: Check No. 251, which is to the order of Alton M. Cates, \$1,000, and according to entries in this day-book, that payment is subdivided as follows: A. M. Cates, fees, \$666.39; back taxes, \$284.94; Sheriff's costs, \$48.67; making a total of \$1,000." If Your Honor please, on the face of these entries, it is quite apparent there is only one legitimate item of charge in this accounting, and that is the item of \$284.94, which is already in the account in Schedule "B," the first entry, paid for back taxes. Certainly the attorney's fees for the litigation of the Big Sespe Oil Company done prior to this accounting cannot be chargeable in this accounting, and, likewise, the Sheriff's costs on the sale under which they bought in the property. Neither is chargeable against us. Therefore, the only one item is \$284.94, which is already in the account and charged up as back taxes.

MR. COCHRAN: Then, assuming that it is stipulated that the two items in the alleged interest payment as they appear in Schedule "B" of the account, "California National Bank, June 13, 1917, \$17.50"; and, "September 17, 1917, \$9.91"; are for interest on this loan of \$1,000 to which we have just referred. Is that right?

MR. ROBINSON: I think so.

MR. COCHRAN: In this day book under date of July 14, 1917, I find an entry, "Paid to the California National Bank, \$750." And again, "September 17, 1917, paid to the California National Bank, \$250."

(Testimony of Thomas M. Hornada.)

Will it be stipulated that these two payments constitute the payment of that loan?

MR. ROBINSON: Well, we will stipulate, without conceding its pertinency. It has nothing to do with this account.

THE SPECIAL MASTER: He is only attaching the interest, as I understand it.

MR. COCHRAN: I then find an entry on page 2 of the book, under "Cash received, May 4, 1917, borrowed from Farmers & Merchants National Bank, \$1,450"; on the opposite side of this account, on page 3, under the heading, "cash paid out," dated May 4, 1917, is the entry, "A. M. Cates, cash \$1,450.00." Wasn't the money that was borrowed from the Farmers & Merchants National Bank by this loan of May 4, 1917, paid to Mr. Cates?

THE SPECIAL MASTER: On the same day?

A. I couldn't say whether it was or not.

MR. COCHRAN: I want to call your attention—it says "cash" and there is no check number—it looks as if the money was borrowed from the bank and exchanged for cash.

THE SPECIAL MASTER: I think if the transactions were small, it could be properly inferred that it came from the bank and went to Mr. Cates. I am inclined to think I should so find, in lack of some explanation. You don't know anything about that?

THE SPECIAL MASTER: I do not know anything about that.

(Testimony of Thomas M. Hornada.)

EXAMINATION BY MR. COCHRAN:

I do not know whether it was paid for attorney's fees; I do not know what it was paid for.

MR. COCHRAN: Under date of August 1, 1917, Schedule "B" of account, there is an entry of payment, "Farmers & Merchants National Bank, interest \$7.00." Is it stipulated that that interest is on account of that \$1,450 loan?

MR. ROBINSON: Yes.

MR. COCHRAN: Under date December 24, 1917, is an entry, "Borrowed from California National Bank, \$1,000.00." In Schedule "B" of the account there appears the following item of interest, "Payment to the California National Bank, March 16th, 1918, \$17.50; June 27, 1918, \$15.74; July 2, 1919, \$8.94." Will it be stipulated that those interest payments were on account of the \$1,000?

MR. ROBINSON: \$1,000 or balance due on that amount at the respective times; it was evidently reduced.

MR. COCHRAN: The \$1,000 borrowed originally December 17, 1917. The following entries also appear in the day book, "September 17, 1917, pay to California National Bank, \$250.00; May 17, 1918, pay to the California National Bank, \$500.00; June 27, 1918, paid California National Bank, \$515.75."

MR. ROBINSON: The first item of \$250 is not connected with this loan and has been disposed of in the previous loan; the second item, May 17, 1918, was

(Testimony of Thomas M. Hornada.)

paid to the California National Bank on account of this loan; and the next payment, \$515.75, June 27, 1918, includes the \$15.74, of the same date, shown in Schedule "B."

EXAMINATION BY MR. COCHRAN:

On Schedule "D" of the account, the charge under date December 20, 1917, "I. D. Mills, \$353.61," was for money advanced at different times. I do not know what times it was advanced or for what purposes. He agreed to send money up, the amounts for the different things, but he did not send them. He stated he would mail them up to me, but he has not done it. I do not recall what the notary fees would have been for item under date March 15, 1918, "Payment to Doctor I. D. Mills, \$2.00"; or the item in the check stub under same day, saying, "notary public fees and stamps."

THE SPECIAL MASTER: In order that we may move on on account of Doctor Mills' condition, I hold that the \$100 mentioned, June 17, 1918, is the \$100 referred to July, 1918, subject to correction, or subject to any motion to be made during the hearing.

MR. COCHRAN: I assume that to be true as to entry of August 15, 1918, \$504, and \$226.50, October 15, 1918.

MR. ROBINSON: It will be deemed that they refer to back salary, refer to salary paid under that resolution, unless we can show that all or any part of it was under different arrangement.

THE SPECIAL MASTER: I will deem in respect to payment made June 27, 1918, and the one made

(Testimony of Thomas M. Hornada.)

August 15, 1918, \$504, and one made October 15, 1918, \$226.50; my finding will consider that the back salaries so mentioned are the salaries referred to in the resolution, subject to any correction or information I may have during the hearing.

EXAMINATION BY MR. COCHRAN (continued):

Oak tree which I have referred to a number of times in my testimony is close to the south line of the property.

EXAMINATION BY SPECIAL MASTER:

On the property side of the line.

EXAMINATION BY MR. COCHRAN:

It is close to where the southerly line of this property and the northerly line of the Kentuck come together. It is not to the extreme easterly, it is nearest to the middle than anything else. Coming up on the Big Sespe property, after leaving the main road, which I term the "junction," you pass through the "Kentuck" property and proceed north through the Kentuck and come on to the southerly line of the Sespe. The Big Sespe river does not pass through this property. This river lies south of part of it and lies southeast of part of it, but it does not come up to it.

EXAMINATION BY THE SPECIAL MASTER:

It flows northwesterly across; it comes just in front of this property and it makes a horse-shoe bend; in fact it is a double horse-shoe bend, turns right back to the south and southwest and then whips around to the northwest again. The nearest point is three hundred feet from the property line.

(Testimony of Thomas M. Hornada.)

EXAMINATION BY MR. COCHRAN:

There was a stream of water coming down the canyon, a stream through the canyon, which has been flowing through the canyon and through this property for a number of years, flowing continually throughout the year. Along in September, in extremely hot weather, it would get pretty low until the last year it failed entirely, the same as all those streams running back from us five or six miles. While the stream was flowing we could take the water from the stream and bring it down by gravity. That is to say, the water beyond the property, flowing through it, could be distributed by pipe line to various points when needed. This was the first time the stream ceased to flow through the property, as far as I have experienced with the property. We had no pipe line or water line which ran from the pumping station or the wells up through the canyon to any other point. There are two places on the north, up through the canyon, where water comes down. They are on the Sespe property. One of these ought to be called a spring and the other the water head is farther up than this spring goes, so that there is but the one place where the water runs in on the outside of where it gathers the water above the property. I can't tell the name of the property immediately to the north of this property; the Rose property does not join on the north.

EXAMINATION BY SPECIAL MASTER:

There is no operating company directly north.

EXAMINATION BY MR. COCHRAN:

Ingalls operates three miles or more away. One

(Testimony of Thomas M. Hornada.)

spring is on the property to the north of the pumping station and the other is still further north, not on the property. As to whether the stream that comes down through the property came from either one or the other of these springs, I say it naturally came from water above our property down to what we would call the main canyon and these other little springs, that you might call it, came down from the other way. There is a very short break in there before emptying into this spring that comes down the canyon.

(Adjournment taken to 2 o'clock P. M. June 15, 1920.)

(Hearing of June 16, 1920; 2 o'clock P. M.)

T. M. HORNADA, previously sworn, testified further as follows:

BY MR. COCHRAN (continued):

Q. What was the source of the stream of water to which you testified yesterday that came down from the north of this property and through the canyon upon the property?

MR. ROBINSON: Objected to as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Overruled.

MR. ROBINSON: Also objected to on the ground that it has been gone into thoroughly on direct examination.

THE SPECIAL MASTER: Overruled.

MR. ROBINSON: Exception.

A. I have never been up there. I could not tell you.

(Testimony of Thomas M. Hornada.)

EXAMINATION BY MR. COCHRAN:

As to whether the stream came from either or both springs to which I testified yesterday, the water would come in from a little one and the one from the north there. I do not know how far up that is. I have never been there.

BY THE SPECIAL MASTER:

There was absolutely no chance to get any water north of the camp at the time that we put the plant in the canyon below.

EXAMINATION BY MR. COCHRAN:

I do not know whether the source of this stream was at one or both of these springs. I had not been up to either of these springs. I do not know of this stream of water which ran through the property running dry in other years. Every year I have been on the property there was always a stream of water through it.

EXAMINATION BY SPECIAL MASTER:

1919 was the first I saw the stream dry.

EXAMINATION BY MR. COCHRAN:

I can't say whether I mean dry as it went through the property or dry above the property. Where we tried to get water it was absolutely dry, as far as I can go. There was a cliff 50 feet high and I was not going over the cliff to try to find out. I never made a pipe line connection directly to a spring to get water, but to where we got water running over a rock in two different places to the north of the property.

EXAMINATION BY SPECIAL MASTER:

As to whether both of the springs are north of the

(Testimony of Thomas M. Hornada.)

property is meant what is north of the wells. As to the location of the two springs, the canyon runs north, and north of the plant there is a little stream comes down on the west side of the canyon and heads in—you can see it coming over the rocks. The other stream I have been talking about comes from farther north. I do not know how far—it comes over a ledge of rocks about 50 feet. This stream on the west side dries up frequently. It is only a small stream when running, but it dries up in summer, but the spring above has kept coming down and we have got enough water by taking it as it came over the ledge of rocks. In 1919 that absolutely turned dry. There was not a drop coming over the rocks. I do not know whether there was a spring to the northwest of the property. I said the water would come down there. We have always maintained a pipe line. I could not tell you the exact location where that pipe line ended at the north end. It ended at the bottom of the canyon not near one of the springs.

Q. BY MR. COCHRAN: Did you, in the summer of 1919, go up to see whether there was any water in any one of these springs or not?

BY MR. ROBINSON: That is objected to as having been asked and answered.

THE SPECIAL MASTER: Objection sustained.

MR. COCHRAN: Exception.

This letter dated August 29, 1914, from Sespe, California, addressed to Col. William H. Cochran, and

(Testimony of Thomas M. Hornada.)

signed T. M. Hornada, is a letter which I wrote on or about the date that the letter bears to Mr. Cochran. I testified that at that time I had charge of this property for Mr. Cochran. The statement in this letter, "we sure had a time in getting No. 4 fixed up. First, we had no water and we laid a pipe line to a good spring above where we had put the line before and we got more water than we wanted and then came the boiler trouble which was aplenty." Now, I will explain at the time that was done, in running this pipe line I ran further up over another ledge, a solid ledge of rock, where I found a pool of water, and I naturally told him that was a spring; that was not a spring, but last summer that was all dry.

EXAMINATION BY SPECIAL MASTER:

The water supply that I referred to in that letter was not really a spring.

EXAMINATION BY MR. COCHRAN:

My memory being refreshed by this letter of August, 1915, the stream ran dry in 1915, down as far as the wells here, but it was not dry above the wells. On the property we used water for circulating tank to run the gas engine, the same as you do in an automobile. We have to have water for cooking purposes and drinking purposes. The amount needed varies.

EXAMINATION BY SPECIAL MASTER:

When we had to carry water up with pails we used about two pails a day.

EXAMINATION BY MR. COCHRAN:

That was for everything, and when we had plenty of

(Testimony of Thomas M. Hornada.)

water there we would wash our clothes once in a while and we would probably use a little bit more in washing our potatoes.

EXAMINATION BY SPECIAL MASTER:

By pails, I mean two and a half gallons.

EXAMINATION BY MR. COCHRAN:

This lowest spring I have testified to, that I made this water system connection to, is four hundred feet from the circulating tank. The circulating tank stands about 40 feet from the camp house southeast. On an air line the camp house would be a few feet nearer.

EXAMINATION BY SPECIAL MASTER:

That is to the spring.

EXAMINATION BY MR. COCHRAN:

We always use a circulating tank when we use a gas engine. The statements and checks which I testified sent monthly in connection with this property from July, 1915, to March 3, 1917, were made and sent to Mr. Cochran personally. Since March 3, 1917, there was not any re-drilling done at either of the wells, 3 or 4. I do not recall the time that this property was sold by the Big Sespe Oil Company on March 30, 1914, to William H. Cochran, as trustee for the Pacific Crude Oil Company. The personal property, machinery and other effects, which were on the realty, on March 30, 1914, and previously owned by the Big Sespe Oil Company, were sold with the realty. I was not on the property for a year and a half before this sale and I could not say whether, even with the exception of some

(Testimony of Thomas M. Hornada.)

minor matters or things, whether the personal property, machinery, tools and other effects on the property, March 30, 1914, were the same as are specified in Schedule "E" of this account. I think October, 1913, was the day I left the property. I do not remember being on the property after I came away from there up to March 30, 1914. I might have been. On October, 1913, when I left the property, I did not know what machinery, tools and personal effects were there. I never had a list of them. I knew there was machinery there. In October, 1913, the power pump and water line that went from the power pump to the radiator of the circulating tank, was not on the property. I can't pick out anything else from Schedule "E." The power plant was the one put in in connection with the water system. The circulating tank was not moved from one place to another subsequent to March 3, 1917. The "lead line" from the tank—water line and lead line from the wells, the gas line, the steam line and loose pipe, testified to by me yesterday, or the previous day, are the same as referred to in Schedule "E" as 3400 feet of two-inch pipe line, but it figures more than 3400 feet. This lead line from the tank to the Kentuck tank, was lying on top of the ground, nearly all of it. The rest of it was covered up in the ground which naturally ran over it on the side of the hill. I do not know how much was in or how much was on the ground.

EXAMINATION BY SPECIAL MASTER:

It would all be deemed above the ground because that part covered was covered by erosion or gradual

(Testimony of Thomas M. Hornada.)

drift. The water line I testified to lay on top of the ground all the way. The lead line from the wells to the tank is all on top of the ground with the exception of possibly 20 feet where it goes up a little hill to the camp. The gas line, the steam line, are all on top. By "loose" I mean loose pipe not in use, lying loose on the ground. The derrick on wells No. 1, 2, 3 and 4, on March 3, 1917, were 64-foot derrick, with floor 16x16 feet. They were not standard derricks, though erected in the ordinary standard way. That does not mean that the four posts which went to support and make up the derricks were embedded in the ground. They dug a hole and made a rock foundation and set a post. By the four supporting posts, as sunk, I mean on one side of the canyon where soft enough, just lay an 8x8 on something, laid down flat-wise.

THE SPECIAL MASTER: I am talking about foundation and he is talking about derricks.

On No. 4 on one side there is no post, just simply dug down and put an 8x8. The other side has a post, I should say, five feet long sunk into the ground.

EXAMINATION BY MR. COCHRAN:

The derrick posts were fastened to the foundation. The drilling engines testified to by me were located at No. 3 and 4 on March 3, 1917. They were attached to the property as follows: There were two sills lying on the ground and there were two sills lying cross-wise of that, and then an engine bed lying on top of that made of 26x26 nine feet long, and the engine sets on top of this block and bolted to it. The blocks are not set in

(Testimony of Thomas M. Hornada.)

the ground. By one pumping plant on this property, on March 3, 1917, I included the frame that it sets in, and there is a master wheel that is keyed onto a shaft that stands upright, about 4½" shaft. That sets on a plate that lies on top of a heavy sill. It has a wheel called a "band wheel" on one side of the shaft and a master wheel on the other end and four upright braces to hold the top of this staff or stand that the master wheel runs on, and on top of that shaft there is a cam that the lead wires from the different wells are attached to and the belt that connects from this that we call the band wheel of the engine. This is not inside of any enclosure. Just sets in the open. These four uprights which I have mentioned are not embedded in the ground. They rest on four cement piers in the ground. These four uprights rest there with a heavy rod or something that keeps them from sliding. In other words, there is some rod or something which is attached to the ground and prevents this upright from moving. The two wooden and three galvanized iron tanks which I say were in the open, rest on the ground. The galvanized tanks which stand on the dirt have nothing whatever under them except the soft dirt. The wooden tanks are on mud sills laid on the ground and then 4x6 on top of the mud sills and the tank on top of that. These uprights are not fastened to the mud sills. There is a 4x6 that lies on top of the mud sill and then the tank sets on those 4x6 which stand up edgewise. So they are six inches from the ground and the thickness

(Testimony of Thomas M. Hornada.)

of your mud sill, whatever that would be. They are not fastened together at all. Each wooden tank has an outlet, just one connection to the other tank. That is an outlet that lets the oil into the pipe line that goes down the hill, and from the pipe line that goes into that; just lies on top and the oil pours in from the top. I do not think there is very much of a foundation, any more than corner stones for the camp house and the bunk house, which were on the property March 3, 1917. They lie on rock corners. I do not see how you can fasten them. It is a fact that every year during the rainy season the road which went up on this property was washed out to a greater or less extent. Every year we always had to make more or less repairs and put it back in condition again. I located No. 5 after I laid out the line which has been termed the "new road." We have made no general location before that. The new road was not entirely completed at the time we decided we were going to put No. 5 in. It had been laid out tentatively, the grading was half or three-fourths done. The 1500 feet of sand line is not included in the cable of Schedule "E." At wells 3 and 4, prior to the fire, there were bull wheels, but no calf wheels. After the fire, at No. 3 and No. 4, we put up calf wheels, but no bull wheels. In a standard rig where they use a calf wheel they have a set of lines on there with a very large block and they use this for handling their casing in the well and putting it in the well and taking it out. Where you are drilling and

(Testimony of Thomas M. Hornada.)

putting in casing the calf wheel is an improvement on the bull wheel in that for the purpose of pulling the casing you can use a calf wheel where you could not use a bull wheel and use the line without detaching the tools, and it is an improvement for the purpose of handling casing, lifting it up and pulling the casing up and putting it in again, and saves cutting lines and all that. Subsequent to the fire we never pulled the casing at either No. 3 or No. 4. The machinery and material and equipment for the development and operation of oil property, and particularly such machinery and equipment as it specified in Schedule "E" of this account was of higher value today than on March 3, 1917, but a good deal of it runs about the same price. As to the cost price for new material, I am not posted on new material at the present time. I have taken into consideration the elements of the cost price of the materials when I testified as to what I considered the values of these items in Schedule "E." Though I do not know the present cost price I can say I have taken that element into consideration for the simple fact this was all second-hand stuff and I would be foolish to go to oil well supply people and ask them the price of second-hand two-inch pipe. I know what the cost price of used two-inch pipe is today. I know the cost price of these working barrels which were used materials. It depends upon the condition of the barrel. A first-class working barrel, complete, with Gerbet attachment and all, it will cost \$25.00. We bought one work-

(Testimony of Thomas M. Hornada.)

ing barrel for No. 4 which appears in this schedule new. The first one we got from Clampitt. It had never been used. He made a price of \$21.70. The other we got from the Oil Well Supply Company, and if my memory serves me right, the complete working barrel cost in the neighborhood of \$29.00. We put on three to replace after the fire, on No. 3 and No. 4. We put two in No. 4, I believe. They are—there are still working barrels in No. 1 and No. 2. I did not put any valuation on March 3, 1917, on working barrels on No. 1 and No. 2, but we have four working barrels on the property, that is all we have at the present time, one on each well. Those at No. 1 and No. 2 were there before the fire. We got one new one for No. 3, two for No. 4. I am talking about what there is there now. We have one broken barrel up there, making five—four working barrels in Schedule "E" is correct. Two in No. 1 and No. 2 wells.

BY THE SPECIAL MASTER: My notes show they were there on March 3, 1917.

MR. COCHRAN: Yes, they have been there all the time.

EXAMINATION BY MR. COCHRAN:

I put a valuation of \$25 apiece on the working barrels 1 and 2. I know the present cost price of new sucker rods today, because I knew a party that did buy some; that is the only way I know what they are worth. On Schedule "E," the items of which I know the present prices for used material of the same character are

(Testimony of Thomas M. Hornada.)

two-inch pipe, sucker rods, gas engines, crown pulleys, steam engines, those three galvanized tanks, \$25.00 apiece. I had a neighbor that bought two nearly like those and paid \$35 second hand. Wooden tanks, \$150 apiece. I knew other tanks to sell a short time ago for \$175 apiece, the same size. My estimate of valuation is made on the theory of used material or equipment.

EXAMINATION BY SPECIAL MASTER:

I know the value of a set of used rig irons. They are worth about \$1,400, an ideal, but these are not ideal, but it includes a crank shaft, a sand wheel and all these other things it takes to put up the rig.

EXAMINATION BY MR. COCHRAN:

I know the used value of six-hole cast iron range on Schedule "E." A six-hole cast iron range costs \$50.00. A lot of kitchen furniture \$30.00. I do not know whether since March 3, 1917, I purchased any single used article except two-inch pipe, which is the same character of any of those items or pieces of machinery which I have just particularly mentioned. I have not sold any used materials of the character of any one of these items. A pumper's wages at \$5.25 per day never included food—pumper's wages at \$5.25—a pumper is supposed to be on the job and work his pump thirty days in the month and when his company calls him off for any other purpose his time is still \$5.25 per day. But if he does not work every day of the thirty days in each month, he gets paid only for the days he works. I have been back to the property since the suit was

(Testimony of Thomas M. Hornada.)

brought, a number of times since the suit was brought, I have spent approximately one-half or one-quarter of the time on the property. During all of the time I was back on the property we were pumping. I know how many oil runs I made in May. I made two. I do not know the total barrels. Both wells were not running since I went back on the property. No. 4 was not. It is not pumping, it seems, for two or three months. I think No. 4 was pumping oil the latter part of March—I could not tell you right now. It had gone off a little time before I came down for the trial and has not been pumping since. It is on the pump but it is not pumping oil. It stopped pumping at the time I came down for the trial. I have not tried to make it pump oil. I have done nothing to remedy that defect. I do not know why it does not pump oil. Just immediately prior to my coming down for the trial of this suit in April it had been pumping oil regularly except the time we had to fix it.

MR. ROBINSON: That is all. We move to strike out all the testimony of the witness on cross-examination to the effect that the property, realty and personal, was sold by the Big Sespe Oil Company to Cochran as trustee, and that the personalty was included in the realty on the ground that no proper foundation was laid, hearsay, not the best evidence, incompetent and irrelevant.

MR. COCHRAN: I would like to have the question settled once and for all. I do not know whether to put the deeds in.

(Testimony of Thomas M. Hornada.)

THE SPECIAL MASTER: You will have to do it on your own responsibility, I guess. I think it is pertinent.

It will be deemed by stipulation of counsel that the deeds are here and offer is made and they are accepted and the objection is overruled.

(Matter continued to June 24, 1920, at 10 A. M.)

(Last hearing June 16, 1920.)

(Hearing continued without taking testimony to June 25, 1920, at 2 o'clock P. M.)

June 25, 1920; 2 o'clock P. M.

PRESENT: Same as before.

BENJAMIN M. HOWE, a witness called on behalf of defendants, being first duly sworn, testified as follows:

MR. ROBINSON: Will it be stipulated that Mr. Howe is a qualified expert in oil wells and properties and prices and values thereof?

MR. COCHRAN: On which point, the valuation?

MR. ROBINSON: The leasehold value.

MR. COCHRAN: If the witness is called for the purpose of testifying as to leasehold value, we will concede he would qualify as to that, but object to his testimony as incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Is that satisfactory, Mr. Robinson?

MR. ROBINSON: Yes.

EXAMINATION BY MR. ROBINSON:

I was present on Wednesday, June 9th, in the after-

(Testimony of Benjamin M. Howe.)

noon, when E. R. Snyder was examined in this hearing. At that time, in the questions to Snyder, I heard the description of the property known as the Big Sespe properties, in litigation in this action.

Assuming that property is so situated and of the extent there described, having upon it four wells, or holes, with oil casings in them, two of which are out of commission, that is, not in condition to be pumped, and not being pumped, one of which some ten years or so ago had yielded three or four barrels a day, and the other of which had yielded two or three barrels a day, but neither of which were in commission during the periods under discussion or consideration, and that the other two wells, during the period between March 3, 1917, and the present time, had yielded an average of 700 barrels a month together, of an approximate or average gravity of 20 gravity crude oil; and that the persons operating the property owned only the tools used in the operating or of the operations of the well, not the casing nor the fixed derricks and riggings, by tools, meaning just small tools necessary in operating the machinery for the pumping of the well, the reasonable market value during that period of time, for the use of that property by the person operating it, assuming, of course, that the operator is not the owner of the title to the property, the production being 700 barrels a month from the two wells, I would say not to exceed 20% of the production piped away from the property and sold.

(Testimony of Benjamin M. Howe.)

EXAMINATION BY SPECIAL MASTER:

I mean the net production, that is always considered, you use the oil for the pumping.

MR. ROBINSON:

Assuming that on the same property, that these articles belonged to the operator, the pumping plant, gas engine, used in pumping the water supply, the receiving tanks for the oil, two sets of rig irons used in the work, the cook house, the bunk house, for the use of the men on the place, and the furniture in those houses, the steam engine used for pulling the wells and the blacksmith shop, and miscellaneous tools in the blacksmith shop, whatever tools were used in the operation of the property, that is, used in the blacksmith shop in the operation of the property, the total value of the blacksmith shop, together with its contents and including the value of the pump house, was about five hundred dollars, the reasonable market value of the use of that property by the operator, assuming the tubing rods, belonging to the realty would be about fifteen percent. In the operation of oil property and the use and occupation and operation thereof, by persons other than the owners, it is and has been in the past few years the general rule in Southern California, in fixing the lease or royalty value of oil property, to appraise or determine by apportionment, the amount of the return of production, or the amount of production attributable to the royalty, and the amount attributable to the work of the operator in

(Testimony of Benjamin M. Howe.)

the same manner that I have estimated the value of the properties concerning which I have just questioned you.

EXAMINATION BY MR. COCHRAN:

When I say twenty per cent I mean what is termed one-fifth royalty. When I say fifteen percent I mean equivalent to one-fifth royalty.

BY MR. ROBINSON: I am having difficulty in getting Mr. Snyder. Will it be stipulated he would testify to the same effect?

MR. COCHRAN: Complainant is willing to concede that if E. R. Snyder was called as a witness at this time he would testify to the same effect that Mr. Howe has done. Complainant, however, reserves the objection to certain testimony as incompetent, irrelevant and immaterial, and also as objectionable on the ground severally stated to the various questions put to Mr. Howe on this examination.

THE SPECIAL MASTER: You mean your objections and exceptions are reserved?

MR. COCHRAN: Yes. We move to strike out the testimony of Mr. Howe as taken, and Mr. Snyder if taken, on the grounds stated.

SPECIAL MASTER: Motion denied; it will stand for what it is worth and according to its weight and pertinence.

MR. COCHRAN: Will it be stipulated that this Standard Oil statement, as published in the various numbers of the Oil Age, as published in Los Angeles,

California, may be read in evidence in lieu of producing any officer of the company to testify?

THE SPECIAL MASTER: You are not objecting it is not proper or best evidence or the fact they seek to prove is incompetent, irrelevant and immaterial?

MR. ROBINSON: It is not an official publication.

MR. COCHRAN: In the Oil Age, 1920—

MR. ROBINSON: Is it offered?

MR. COCHRAN: I am going to offer it—purporting to be statement offered by the Standard Oil Company for the different grades of oil in all the California fields which are specifically mentioned, and in which Ventura County is particularly mentioned—I offer to read in evidence as evidence of such prices, the prices quoted in that statement.

MR. ROBINSON: As of what date?

MR. COCHRAN: It is stated that these prices became effective March 17, 1920.

MR. ROBINSON: Objected to, incompetent, irrelevant and immaterial, not within the issues of the case.

MR. COCHRAN: If you object to it as incompetent, it destroys it; unless it is understood the incompetency don't go to the character of the proof.

THE SPECIAL MASTER: I do not think Mr. Robinson meant it is incompetent.

MR. ROBINSON: Yes, I think incompetent, but not the publication. We will concede that the document you intend to read from contains the published prices of the Standard Oil Company in force on oil

on the date mentioned in that article. We object to the evidence on the ground it is incompetent, irrelevant and immaterial.

THE SPECIAL MASTER: Objection is overruled.

MR. ROBINSON: Also objected that it is irrelevant and immaterial.

THE SPECIAL MASTER: Overruled.

MR. COCHRAN: The published prices on oil, effective March 17, 1920—from 19 to 19.9 gravity, \$1.51

“ 20 “ 20.9 “ 1.54

“ 21 “ 21.9 “ 1.58.

I would also read from the similar statement, as published in the Oil Age of March, 1920, which purports to give the prices as effective January 31, 1920.

MR. ROBINSON: Will it be stipulated that the same objection may be deemed to have been made to each one of the offers?

MR. COCHRAN: Yes.

MR. ROBINSON: And will the same ruling be made?

SPECIAL MASTER: Yes.

MR. ROBINSON: And that we may be deemed to have moved to strike them out?

SPECIAL MASTER: Yes; in other words, you are deemed to save all points raised by assignments of error.

MR. COCHRAN: Effective January 31, 1920, prices from 19 to 19.9 gravity \$1.26

“ 20 “ 20.9 “ 1.29

“ 21 “ 21.9 “ 1.33.

I would also read in evidence the similar statement of prices as published in the Oil Age, July, 1919, which purports to give the price effective June 10, 1919.

from 19 to 19.9 gravity, \$1.25

“ 20 “ 20.9 “ 1.27

“ 21 “ 21.9 “ 1.29.

In connection with that proof, it is a very material fact to show the gravity of the oil which was run by the Turner Oil Company under this agreement. I might say, through an oversight of my own, that the Turner Oil statement fails to give the gravity. The Union Oil Company invariably gave the gravity of the oil for each run. I took it for granted similar conditions existed in the Turner Oil Company. I came over here and found the Turner Oil statement does not give the gravity. Then I took up the run-tickets, but I found that the run tickets were not there for all the runs which appear on the Turner statement, so that we are unable at this time to show what the gravity of the oil was on some of the runs made. Yesterday forenoon Mr. Martin wrote a letter to Cates & Robinson calling attention to what we wanted to do in connection with the proof, and also to the fact that the tickets were not here, and also to have Mr. Hornada furnish them.

MR. ROBINSON: It will be impossible for him to do so without going through the record and finding out what you want.

MR. COCHRAN: We can get it directly from the Turner Oil Company, the consolidated information, if there is no objection.

(Testimony of William H. Cochran.)

MR. ROBINSON: We have no objection to that being offered informally as long as Mr. Hornada looks it over and puts his "O. K." on it.

MR. COCHRAN: That will be consented to, to save time, that we can produce that.

MR. ROBINSON: Mr. Hornada will "O K" anything that he is satisfied is correct.

WILLIAM H. COCHRAN,

a witness called on behalf of Complainant, being first duly sworn, testified as follows:

EXAMINATION BY MR. MARTIN:

I am William H. Cochran, that is the plaintiff in this suit of Cochran vs. Big Sespe Oil Company, Equity E. No. 26, United States District Court. I was familiar with the property in controversy in this matter on the 3rd day of March, 1917; I was familiar with it on March 30, 1914, and became familiar with it on that day. I continued to be acquainted with it from March 30, 1914, to March 3, 1917. I am the same William H. Cochran named in the grant deeds, in the two deeds now in evidence, from the Big Sespe Oil Company, dated March 30, 1914.

BY THE SPECIAL MASTER:

I was on this property immediately after March 30, 1914, not the same day. I inspected the property there. I was there a number of times between March, 1914, and March 3, 1917. I was not there on March 3rd, but between those dates. I went up on the property near March 30, 1914, a week, a few days, between

(Testimony of William H. Cochran.)

the time I purchased the property and March 3, 1917, I was there possibly seven or eight times. I could fix the exact time nearest to March 3, 1917, by referring to correspondence, but my best recollection is that it was just towards the end of 1916. The most approximate date I have given as to March 3, 1917, is the latter part of December, 1916. I was never on the property after March 3, 1917. In the meantime I employed some men who operated that property and I had an inventory made immediately after March 30, 1914, when I took it over. I had men employed there and know nothing was added to it excepting by my direction. I could not fix the time—1916, according to my best recollection, was around the fall of 1916. I can also say this, that the property, the machinery, equipment and personal property which I took possession of under the two deeds from Big Sespe Oil Company of March 30, 1914, is the same machinery, equipment and personal property that was on that property when Hornada took charge of it in July, 1915. That was the same machinery and equipment and personal property that was on the realty on March 3, 1917, less the ordinary wear and tear and repairs.

T. M. HORNADA, Recalled.

EXAMINATION BY MR. COCHRAN:

When I went back on this property in July, 1915, there was certain machinery, equipment and personal property on it. So far as I know outside of the ordi-

(Testimony of Thomas M. Hornada.)

nary wear and tear and possibly some minor repairs on this machinery, equipment and personal property, the machinery, equipment and personal property which I found on this realty when I went back there in July, 1915, the same as what was there when the Big Sespe Company took possession March 3, 1917. I did not take any inventory of it at that time; I do not know for sure whether it was all there or not.

EXAMINATION BY SPECIAL MASTER:

I do not remember anything that was missing.

MR. COCHRAN: That is all.

MR. HORNADA: That is all the proof we have.

MR. COCHRAN: That is all the testimony we have.

In the District Court of the United States, for the Southern District of California, Southern Division.

* * *

Hon. Oscar A. Trippett, Judge Presiding.

WILLIAM H. COCHRAN, etc.,)

Plaintiff.)

vs.)

No.....)

BIG SESPE OIL COMPANY, etc.)

Defendant.)

Reporter's Transcript of Oral Opinion.

LOS ANGELES, CALIFORNIA,

WEDNESDAY, NOVEMBER 3, 1920, 2 P. M.

THE COURT: Mr. Robinson, I have worked over

this report of the Special Master, and I have made up my mind to overrule all the exceptions on both sides.

The item there of \$260 paid as income tax, I made inquiry of Mr. Carter in regard to that, and he said that as soon as the plaintiff here got credit for this amount, he would have to pay an income tax on it, so your having paid the income tax does not inure to his benefit; but Mr. Carter, as I stated the facts to him, told me that in his opinion the United States would refund that \$260. As it cannot inure to the benefit of the plaintiff, I do not think you are entitled to credit for it. I suppose you want an exception?

MR. ROBINSON: If Your Honor please, I would like an exception to each of the rulings.

THE COURT: Now, there is a matter here that is interesting to me, in regard to the surplus. What have you got to say about that matter, either of you? I shall hear from you gentlemen about it.

(Question argued by counsel for both parties.)

* * * *

THE COURT: Now, in that regard, I will tell you what occurred to me. I think that you, as trustee, owning that legal title, ought to have intervened here and adopt, as an intervenor, all that has occurred, and claim a judgment to the surplus, whatever it is. Now, whether you take that course or not, you can do as you please.

MR. COCHRAN: I think that would be very fair, sir.

THE COURT: I think that could be done. I had a case in the State Court, entitled Baines vs. Babcock,

which was a suit to collect unpaid stock subscriptions, and after the plaintiff got judgment for the collection of the subscriptions, I filed an intervention. The Supreme Court said that under the Code of Civil Procedure an intervention was not appropriate at that time, but the case ought to be docketed as an independent case, and proceed. I always thought the Court was wrong in that regard. In a Court of Equity, you have got now a right to intervene before final decree. You might look that up.

MR COCHRAN: If Your Honor please, you will notice in this case which I have read, that the final decree ordered the surplus moneys to be paid in,—

THE COURT: Yes.

MR. COCHRAN: —and then allowed the respective claimants—although there was a Receiver—and the others, to intervene after the final decree.

THE COURT: Yes.

MR. COCHRAN: In other words, in this case it might delay the entry of the final decree as it is, by entering a final decree directing the surplus to be paid.

THE COURT: I will send this case back to the Master for him to calculate the final sum due under his report, and then we will see what is the best thing to be done with regard to this surplus.

* * * * *

[TITLE AS BEFORE.]

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties to the above entitled suit, as follows, to-wit:

FIRST: That, on the appeal herein of the above named Defendant, Big Sespe Oil Company, the foregoing shall constitute and is the said Defendant's proposed statement in condensed and narrative form, of the evidence and of the testimony presented and adduced on the trial and hearing of the above entitled suit, and as required by Equity Rule 75.

SECOND: That, the said Statement may be lodged in the Office of the Clerk of this Court, such lodgment to be made, *nunc pro tunc*, as of March 11, 1921.

THIRD: That the two proposed Statements of the Evidence heretofore lodged herein, in the office of the Clerk of this Court, by the said Defendant, Big Sespe Oil Company, on March 11, 1921, and March 14, 1921, respectively may be withdrawn by the said Defendant, and returned to it or to its Solicitors.

FOURTH: That the foregoing annexed Statement is true, complete and properly prepared, and as required by the aforementioned Equity Rule 75.

FIFTH: That the said Statement shall be presented for approval to the Honorable Oscar A. Trippet, United States District Judge, at his Chambers, in the Post Office Building, in the City of Los Angeles, State of California, on Friday, the 18th day of March, 1921, at 1:30 o'clock in the afternoon of that day, or as soon thereafter as Counsel can be heard; and that the said Statement may be then and there so approved by the said Honorable District Judge, subject, however, and only to the Complainant's objection that

the time within which any such Statement could and should have been lodged, had expired previous to the aforesaid Eleventh day of March, 1921, and that said time had not been lawfully or properly extended.

SIXTH: That this stipulation and agreement is made and is subject to the Complainant's contention and objection that the time within which the said Defendant, Big Sespe Oil Company, should have so lodged such Statement, on its appeal herein, had expired previous to the Eleventh day of March, 1921, and that said time has not been lawfully or properly extended; and that, consequently, no such Statement can be now lawfully lodged or filed in this suit.

DATED, Los Angeles, California, March 18th, 1921.

Theodore Martin

*Solicitor for Complainant and Intervening
Complainant.*

Cates and Robinson

Dudley W. Robinson

A. T. McCormick

Solicitors for Defendants.

It is so ordered that said bill or statement be allowed and filed.

Trippet

Judge

Filed Mar. 16, 1921. Chas. N. Williams, Clerk; by
Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

**Complainant's Objections to Filing of the Statement
of the Evidence.**

The Complainant-Appellee herein, William H. Cochran, and also the Intervening Complainant-Appellee, William H. Cochran as Trustee for Pacific Crude Oil Company, hereby object to the lodgement, the approval and (or) the filing of any and every "Statement of the Evidence" by, for or on behalf of the Defendant-Appellant, Big Sespe Oil Company, on its appeal in the above entitled suit; and, present and state the following as the grounds of such objections:

FIRST: Because such Statement of the Evidence was not lodged, approved and (or) filed during, and before the expiration of the term of this Honorable Court, in which the aforesaid appeal was allowed, to-wit, the July, 1920, Term of the Court.

SECOND: Because the Order made and entered in this suit on January 8, 1921, purporting to continue the matter of completing, settling and filing such Statement of the Evidence to the then next Term of this Court, to-wit, to the January, 1921, Term, was made without due or any lawful authority whatsoever therefor.

THIRD: Because the last aforementioned Order of January 8th, 1921, was made and entered without any notice whatsoever to this Complainant-Appellee or to this Intervening Complainant-Appellee, or to their Solicitor of record herein, and more particularly without the reasonable notice of the application for said

order, as is required by the Supreme Court Rules regulating the practice in suits in Equity, should be given.

FOURTH: Because said last aforementioned Order of January 8th, 1921, was made without prior notice to, and in the absence of the said Complainant-Appellee, and of the said Intervening Complainant-Appellee, and no copy of said Order was sent by the Clerk of this Honorable Court, by mail or otherwise, to the said parties to this suit, or to either of them, or to their Solicitor of record herein, as is required by the Supreme Court Rules regulating the practice in suits in Equity, should be done. And further, that no copy of the said Order, nor any notice of the making and entry thereof, has ever been served on, or been received by the said parties, or either of them, or their Solicitor of record herein.

FIFTH: Because the two certain Orders made and entered in this suit, on January 31, 1921, and March 2, 1921, respectively, and respectively purporting to extend the time within which the Defendant-Appellant, Big Sespe Oil Company, might settle and file a Statement of the Evidence on its appeal herein, were respectively made and entered without any notice whatsoever to this Complainant-Appellee, or to this Intervening Complainant-Appellee, or to their Solicitor of record herein; and more particularly, without the reasonable notice of the application for said Orders or either of them, as is required by the Supreme Court Rules regulating the practice in suits in Equity, should be given.

SIXTH: Because said last two aforementioned Orders of January 31, 1921, and March 2, 1921, respec-

tively, were respectively made without prior notice to, and in the absence of the said Complainant-Appellee, and of the said Intervening Complainant-Appellee, and no copies of said Orders or of either of them, were sent by the Clerk of this Honorable Court, by mail or otherwise, to the said parties to this suit, or to either of them, or to their Solicitor of record herein, as is required by the Supreme Court Rules regulating the practice in suits in Equity, should be done. And further that no copies of the said Orders, or of either of them, nor any notice of the making and entry thereof, has ever been served on, or been received by the said parties, or either of them, or their Solicitor of record herein.

SEVENTH: Because the two certain Orders made in this suit on January 31, 1921, and March 2, 1921, respectively, by the Honorable Oscar A. Trippet, District Judge, and respectively purporting to extend the time within which the Defendant-Appellant Big Sespe Oil Company, might file a copy of the record in this suit, on its appeal herein, with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, were respectively made without any notice whatsoever to this Complainant-Appellee, or to this Intervening Complainant-Appellee, or to their Solicitor of record herein; and more particularly, without the reasonable notice of the application for said Orders or either of them, as is required by the Supreme Court Rules regulating the practice in suits in Equity, should be given.

EIGHTH: Because said last two aforementioned Orders of January 31, 1921, and March 2, 1921, re-

spectively, were respectively made without prior notice to, and in the absence of the said Complainant-Appellee, and of the said Intervening Complainant-Appellee, and no copies of said Orders or of either of them, were sent by the Clerk of this Honorable Court, by mail or otherwise, to the said parties to this suit, or to either of them, or to their Solicitor of record herein, as is required by the Supreme Court Rules regulating the practice in suits in Equity, should be done. And further, that no copies of the said Orders, or of either of them, nor any notice of the making and entry thereof, has ever been served on, or been received by the said parties, or either of them, or their Solicitor of record herein.

Dated, Los Angeles, California, March 18th, 1921.

THEODORE MARTIN,

Solicitor for Complainant-Appellee, and for Intervening Complainant-Appellee.

Filed Mar. 18, 1921. Chas. N. Williams, Clerk;
Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Specifications of Reasons for Not Approving Proposed Interlocutory Decree

TO THE ABOVE NAMED PLAINTIFF, AND TO
THEODORE MARTIN, ESQUIRE, HIS SOLICITOR:

The defendants have examined the copy of the proposed interlocutory decree in the above-entitled action which you presented to them for the purpose of examination with a view to approving the original thereof,

as provided in Rule 45 of the Rules of Practice, which they do not approve as provided in said Rule for the following reasons:

The said interlocutory decree does not correctly state all of the previously determined matters in said cause, in that it does not set out that the Pacific Crude Oil Company is a corporation organized and existing under and by virtue of the laws of the State of Delaware, nor that said corporation has forfeited its charter to said State of Delaware, nor does it otherwise specify the status of said corporation under and as a creature of the laws of said State of Delaware, nor does it set forth that said corporation has never filed its articles of incorporation or its charter or a designation of an agent to receive service of process in the State of California, as provided in the laws of the State of California.

That the foregoing are material matters brought to issue in the pleadings and necessarily determined by the Court, and are material and essential elements in determining the rights of the parties and deciding the issues in said cause.

Dated Los Angeles, California, April 21, 1920.

Very respectfully yours,

ALTON M. CATES,

DUDLEY W. ROBINSON,

Solicitors for Defendants.

Endorsed: Received Specifications of which the within is a copy this 21 day of April, 1920. Theodore Martin, Attorney for Plff.

Filed Apr. 2, 1921. Chas N. Williams, Clerk; by
R. S. Zimmerman, Deputy Clerk.

[TITLE AS BEFORE.]

Interlocutory Decree.

This cause came on to be heard at this term of the Court, and also was argued and submitted by Counsel for the respective parties; and thereupon, and upon consideration thereof, it was

ORDERED, ADJUDGED AND DECREED as follows, viz:

FIRST: That on the second day of January, 1917, Big Sespe Oil Company, a corporation, one of the defendants in this suit, recovered the certain judgment in the Superior Court of the County of Ventura, State of California, against Pacific Crude Oil Company, a corporation, in the sum of Fifteen Thousand Dollars (\$15,000.00), together with interest thereon at Six per cent (6%) per annum from March 30, 1914, and also for its certain costs and disbursements as taxed at Fifty-five and 70/100 Dollars (\$55.70), which said judgment was on the same day filed in the office of the Clerk of the said Court, and also likewise therein entered of record in Judgment Book 8, at page 140.

That thereafter, and also on the said Second day of January, 1917, the said judgment was docketed accordingly by the Clerk of the aforementioned Superior Court of the County of Ventura, State of California, in the Judgment Docket as kept by him.

SECOND: That thereafter, by virtue of and pursuant to the certain Writ of Execution on the aforesaid judgment, issued to him on the Second day of February, 1917, out of and from the aforementioned Superior Court of the County of Ventura, State of California, and by him received on the Third day of February, 1917, the then Sheriff of the said County of Ventura, State of California, E. G. McMartin, the other of the Defendants in this suit, sold, at public auction, on the Third day of March, 1917, and according to the Statute in such cases made and provided, all the estate, right, title and interest which the said judgment debtor, Pacific Crude Oil Company, a corporation, had on the said Third day of February, 1917, or at any time afterwards, of, in and to the certain real property in the Bill of Complaint in this suit particularly described and set forth, and which said real property is bounded and described as follows, to-wit:

All that certain real property situate, lying and being in the County of Ventura, State of California, which is bounded and described as follows, to-wit:

The West half of lot No. 6 and lots Numbered 7 and 9 of Section One (1), in Township 4 North, range 20 West, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in lot 9, Section One (1), in Township 4 North, Range 20 West, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the Northwest corner of the Kentuck Oil Claim as said claim is described in that patent executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898, and recorded in Book 2, page 336, of Patents, records of Ventura County; thence

1st: East five (5) chains along the North line of said Kentuck Oil Claim; thence

2nd: North at right angles three (3) chains; thence

3rd: North sixty degrees (60°) West 4 chains; thence

4th: South fifty-six and one-half degrees ($56\frac{1}{2}^{\circ}$) West to a point 4 chains North of the center of said Section One (1), Township 4 North, Range 20 West, which point is also the Northwest corner of the Southeast quarter of said Section One (1); thence

5th: South four (4) chains along the west line of said Southeast quarter of said Section One (1); thence

6th: East at right angles 5.95 chains to the West line of said Kentuck Oil Claim; thence

7th: North along the West line of said Kentuck Oil Claim to place of beginning, containing nine (9) acres more or less.

The New York Oil and Placer Mining Claims, located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in Book 2, page 245, of Mines, records of Ventura County, and included in the location of the "Nellie Belle" placer mining claim hereafter referred to.

Also, all that part of the Henry Gage Placer Mining Claim not included in lot 7, Section One (1), Township

4 North, Range 20 West, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in Book 3, page 154, of Mines, Records of Ventura County.

Also, the Elwood Placer Mining Claim, located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in Book 19, page 315, of Mines, Records of Ventura County.

Also, the "Nellie Belle" placer mining claim, located by T. M. Hornada, E. F. Coldwell, and J. A. Clampitt, April 1, 1910, and recorded in Book 19, at page 315, of Mines, Record of Ventura County.

THIRD: That at the aforesaid sale, all and every the aforesaid estate, right, title and interest of the said judgment debtor, Pacific Crude Oil Company, a corporation, of, in and to the certain hereinbefore mentioned and particularly described real property, was bid in by, and was sold to, the aforesaid judgment creditor, Big Sespe Oil Company, for the certain sum of Seventeen Thousand Three Hundred Forty and 50/100 Dollars (\$17,340.50).

FOURTH: That immediately thereafter, and on the said Third day of March, 1917, the said Sheriff gave to the said purchaser his written certificate of such sale, bearing date of that day, and also thereafter filed a duplicate thereof for record in the office of the County Recorder of the aforementioned County of Ventura, State of California, in which said office it was recorded on the Fourteenth day of March, 1917, in Book 4 of Certificates of Sale, at page 75.

That said Certificate of Sale, and also said duplicate thereof, were in the form and manner required by the

Statutes of the State of California in such cases made and provided, and were respectively likewise given and filed; and also showed and declared, *inter alia*, as also required by the said Statutes, that all and every such estate, right, title and interest, as had been thus sold under execution as aforesaid, "is subject to redemption in lawful money of the United States, pursuant to the Statutes in such cases made and provided."

FIFTH: That since the aforesaid sale, all and every the aforesaid estate, right, title and interest of the said judgment debtor, Pacific Crude Oil Company, of, in and to the certain real property in the Bill of Complaint in this suit particularly described and set forth, ever has been, and still is, subject to redemption by the said judgment debtor, or its assignee, from the aforesaid sale thereof under execution, pursuant to, and in the form and manner by the Statutes of the said State of California in such cases made and provided.

SIXTH: That at the time of the docketing of the aforesaid judgment on January 2, 1917, and also at the time of the aforesaid execution sale on March 3, 1917, the legal title to the real property mentioned and particularly described in the Bill of Complaint in this suit, was vested in and was held by William H. Cochran as Trustee for Pacific Crude Oil Company, the aforementioned judgment debtor, and had been continuously so vested and held since the 30th day of March, 1914; and that at the said times, the said judgment debtor, Pacific Crude Oil Company, neither had nor possessed any estate or any interest in the said real property, but had

and possessed solely the right to enforce the performance of the trust in connection therewith, against the said Trustee.

SEVENTH: That immediately after said aforementioned execution sale, and on March 3, 1917, the said purchaser thereat, Big Sespe Oil Company, entered upon and took possession of the aforementioned real property; and ever since then continuously has been and still is in such possession and occupation.

That during such possession and occupation of the said real property, the said purchaser, Big Sespe Oil Company, has regularly and continuously operated the oil producing wells thereon, has likewise thereby produced and extracted crude petroleum from the said real property, has also likewise sold such crude petroleum as was thus produced and extracted, and from such sales has collected and received certain sums of money, the amounts of which are unknown to the Complainant in this suit.

EIGHTH: That during and until the expiration of the period or time prescribed and fixed by the Statutes of the said State of California within which redemption might and could be made from said execution sale, the said purchaser, Big Sespe Oil Company, was not entitled to such possession or occupation of the said real property; but was entitled to receive the rents and profits therefrom.

NINTH: That such moneys, rents and profits as have been thus collected and received by the said purchaser, Big Sespe Oil Company, then were, always

have been, and still are, under the Laws and Statutes of the State of California relative thereto, a credit upon the redemption money likewise required to be paid by the said Laws and Statutes, to make and effectuate the certain hereinbefore found and adjudged redemption and right of redemption.

TENTH: That on March 1, 1918, and before the expiration of the period or time ordinarily allowed under the Laws and Statutes of the State of California, for such redemption, to-wit, twelve months after the aforesaid execution sale on March 3, 1917, the said judgment debtor, Pacific Crude Oil Company, duly demanded in writing of the said purchaser, Big Sespe Oil Company, a written and verified statement of the amounts of such aforementioned moneys, rents and profits as had been collected and received by it from the said real property, as hereinbefore found and adjudged.

That this said written demand was authorized by and was also duly made pursuant to and under the provisions of the Laws and Statutes of the State of California in such cases made and provided; was made within the period or time for redemption as prescribed and fixed by the said Laws and Statutes; was made with due and proper authority; was in due and legal form and as prescribed and required by the said Laws and Statutes; and in all particulars was duly, properly, legally and equitably made.

ELEVENTH: That for a period of one month from and after said written demand, the said purchaser, Big

Sespe Oil Company, failed and refused, and still has failed and refused to give such demanded, or any statement of the moneys, rents and profits so collected and received by it from the said real property, as hereinbefore found and adjudged.

That by reason and because of such failure and refusal to give such demanded statement, the hereinbefore mentioned right of redemption, and the period or time for such redemption was extended for and until the expiration of the further period or time particularly specified and provided for by the Laws and Statutes of the State of California in such cases made and provided, and which said further period or time had not expired at the time of the commencement of this suit.

TWELFTH: That on the Eleventh day of June, 1919, and by a certain instrument in writing bearing date of that day, the said judgment debtor, Pacific Crude Oil Company, duly sold, assigned, transferred and conveyed, for a good and valuable consideration, unto the Complainant herein, William H. Cochran, its certain hereinbefore described and adjudged redemption and right of redemption.

That this said instrument was made, executed and delivered with due, proper and legal authority, and was and is sufficient, both at law and in equity, to, and, at law and in equity actually did assign, transfer and convey unto the said William H. Cochran, the Complainant in this suit, in his own right, and for his own personal use and benefit, the hereinbefore found and adjudged certain redemption and right of redemption:

and that thereby the said William H. Cochran became lawfully seized and possessed of the right to make such aforementioned redemption in the form and manner prescribed by the Laws and Statutes of the State of California in such cases made and provided, and for his own use and benefit.

That since the said Eleventh day of June, 1919, the Complainant herein, William H. Cochran, ever has been, and still is, both lawfully and equitably entitled to make such aforementioned redemption, and to institute and maintain this suit for the enforcement thereof.

That this suit was commenced within the time limited for such suits by the Statutes of the State of California relative thereto; and neither Complainant nor his assignor, Pacific Crude Oil Company, has been or is guilty of any laches, either at law or in equity, in the commencement of the same, or in the making of the aforesaid redemption.

THIRTEENTH: That the certain instrument in writing, without date, but purporting to have been executed on the Twenty-ninth day of August, 1918, and recorded in the office of the Recorder of the County of Ventura, State of California, on the Third day of September, 1918, in Book 163 of Deeds, at pages 340 and following, and wherein and whereby E. G. McMartin, Sheriff of the County of Ventura, State of California, purported to grant, bargain and sell unto the aforesaid purchaser, Big Sespe Oil Company, all the hereinbefore mentioned estate, right, title and interest of the said judgment debtor, Pacific Crude Oil Com-

pany, of, in and to the certain real property in the Bill of Complaint in this suit mentioned and particularly described, was and is void, *ab initio*, and that the aforesaid purchaser, Big Sespe Oil Company took nothing thereby, on the ground that the same was made and given before the expiration of the period or time for the aforesaid redemption, as hereinbefore found and adjudged. And further that said instrument shall be surrendered, cancelled and destroyed.

FOURTEENTH: That the aforesaid judgment debtor, Pacific Crude Oil Company, is a corporation formed, organized and existing under and by virtue of the laws of the State of Delaware.

That, on January 28, 1918, said Pacific Crude Oil Company forfeited its charter to the said State of Delaware, for and because of non-payment of certain taxes then due to that said State.

That, by said forfeiture of its charter, said Pacific Crude Oil Company did not cease to exist as a corporation, but, on the contrary, and under and pursuant to the Statutes of said State of Delaware in such cases made and provided, it was continued a body corporate for the term of three years from said January 28, 1918, for the purposes and with the powers in said Statutes also particularly prescribed and set forth, and which included the hereinbefore mentioned and adjudged redemption, and the bringing and maintaining any and all necessary actions and proceedings in connection therewith, and for the enforcement thereof.

That, after said forfeiture of its charter, and during the term of three years thereafter, said Pacific Crude

Oil Company under and pursuant to the Statutes of the said State of Delaware, was continued a body corporate, and also retained its officers and directors with all the authority theretofore possessed by them and each of them.

That the hereinbefore mentioned and adjudged written demand for a written and verified statement of rents and profits dated March 1, 1918, and also the hereinbefore mentioned and adjudged written instrument of assignment, dated June 11, 1919, were respectively made and executed by the then legally constituted and also legally and duly authorized and empowered attorney and officers of said Pacific Crude Oil Company, and were also likewise respectively served and delivered.

FIFTEENTH: That said Pacific Crude Oil Company never has filed in the office of the Secretary of State of the State of California, a certified copy of its Articles of Incorporation, or of its Charter, or of the Statute or Statutes, or legislative, or executive, or governmental act or acts creating it, nor any designation of any person to receive service of process for it in the said State of California. And, further, that said Company was not required by any law or statute of said State to file the said documents, or any of them.

That said Pacific Crude Oil Company never did do any business in the said State of California, nor did it ever maintain any office in the said State, nor did it ever enter the said State for the purpose of doing any business therein, within the meaning, intent and pur-

poses of the Statutes of said State of California, in such cases made and provided. And, further and consequently, that said Pacific Crude Oil Company at no time was subject to the said Statutes, or any of them, nor to any of the requirements, penalties, or disabilities thereby created and imposed.

SIXTEENTH: That this suit be referred to Force Parker, Esq., as Master, *pro has vice*, who is hereby appointed as such, for an accounting and disclosure by the aforesaid purchaser, and one of the defendants in this suit, Big Sespe Oil Company, of such moneys, rents and profits as it has collected and received from the aforesaid real property since the said Third day of March, 1917, as hereinbefore found and adjudged.

That said Master and also the Complainant in this suit, respectively have the right and authority to examine or cause to be examined under oath in the premises, *ore tenus*, or otherwise, as well as any and all of the officers, agents, servants and employees of the said Defendant, Big Sespe Oil Company, as any other witnesses; and also to cause the production of any and all books, vouchers, papers and other documents pertinent and proper in the premises; and that the officers of the said Defendant Company attend from time to time for the purpose of such examination, before the said Master, at such places as the said Master shall direct.

That said Master be and he hereby is clothed with the usual powers and authorities of a Master in all things touching the premises.

That said Master state a full account in the premises, upon the basis of this Decree.

SEVENTEENTH: That this Decree is intended to be, and is Interlocutory and not Final. The Court retains the Bill of Complaint, and, upon the coming in of the Master's Report, a Decree will be entered finally and completely disposing of the controversies between the parties to this suit.

Dated this 23 day of April, A. D. 1920.

TRIPPET,
District Judge.

Decree entered and recorded April 23d, 1920. Chas. N. Williams, Clerk.

Filed Apr. 23, 1920. Chas. N. Williams, Clerk; by Ernest G. Morgan, Deputy.

[TITLE AS BEFORE.]

Statement of Account Under Equity Rule No. 63.

The defendant, Big Sespe Oil Company, a corporation, not waiving but reserving all objections to the interlocutory decree ordering an account of the moneys, rents and profits received from the real property described in the pleadings in the above-entitled action, and to the order of the Special Master for the production before him of such account, presents an account of the moneys received and disbursed and the profits attributable to and realized from said realty, as follows:

RECEIPTS.

To cash received from sale of oil,	
as per schedule "A" hereto an-	
nexed	\$21,531.68

DISBURSEMENTS.

By taxes, interest and bond premiums as per Schedule "B" hereto annexed.....	\$ 1,321.94
By expenses of replacing equipment as per Schedule "C" hereto annexed.....	1,483.58
By labor and expenses of operation as per Schedule "D" hereto annexed.....	10,406.35
By interest on value of equipment (personal property) as per Schedule "E" hereto annexed, at the rate of 7% per annum on estimated valuation of \$17,856.50.....	3,958.19
	<hr/> \$17,170.06
Net receipts.....	\$ 4,361.62

Said defendant presents as a part of its account, the fact that the owner of realty upon which operations for the production of oil are conducted, is customarily paid a one-sixth ($1/6$) royalty of the gross production after deducting therefrom all gas and oil used in the operation of the leased premises—in other words, one-sixth ($1/6$) of the gross receipts from the sale of oil, which in this case would amount to Three thousand five hundred eighty-eight and $61/100$ (\$3,588.61) dollars. As will be seen by the foregoing account, there was actually realized from the use of the realty the sum of Four thousand three hundred sixty-one and $62/100$

(\$4,361.62) dollars, and it is respectfully represented that the defendant company is entitled to and should receive a credit of the difference between said sum of Four thousand three hundred sixty-one and 62/100 (\$4,361.62) dollars and said one-sixth ($1/6$) of the gross sales, to-wit, Three thousand five hundred eighty-eight and 61/100 (\$3,588.61) dollars, which amounts to the sum of Seven hundred seventy-three and 01/100 (\$773.01) dollars, as and for a compensation to the corporation for its management of said property. Said defendant therefore states that it has received and collected as profits from and on account of said realty, the sum of Three thousand five hundred eighty-eight and 61/100 (\$3,588.61) dollars.

Dated May 4, 1920.

Respectfully submitted,

BIG SESPE OIL COMPANY,
a corporation.

By L. A. CLAMPITT,
President.

By DR. I. D. MILLS,
Secretary.

SCHEDULE "A."

STATEMENT OF RECEIPTS AND EXPENSES OF BIG SESPE OIL COMPANY, BEGINNING MARCH 3rd, 1917.

1917.						Cr.
April	20	Cash	March	Oil	Run.....\$	329.09
May	26	"	April	"	"	167.77
June	16	"	May	"	"	526.00
July	17	"	June	"	"	638.78

Aug.	16	"	July	"	"	.....	436.16
Sept.	17	"	Aug.	"	"	.....	643.58
Oct.	26	"	Sept.	"	"	.....	633.63

Derricks burned in October.

1918.

Feb.	19	Cash	Jan.	Oil Run.....		638.80
Mch.	16	"	Feb.	"	"	700.27
April	16	"	March	"	"	448.01
May	17	"	April	"	"	698.46
June	26	"	May	"	"	903.91
July	23	"	June	"	"	814.02
Aug.	15	"	July	"	"	825.63
Sept.	15	"	Aug.	"	"	879.29
Oct.	15	"	Sept.	"	"	853.59
Nov.	22	"	Oct.	"	"	817.86
Dec.	16	"	Nov.	"	"	832.60

1919.

Jan.	21	"	Dec.	"	"	.....	872.84
Feb.	11	"	Jan.	"	"	.....	689.03
March	19	"	Feb.	"	"	.....	870.44
April	21	"	March	"	"	.....	891.25
May	17	"	April	"	"	.....	629.58
June	18	"	May	"	"	.....	978.14
July	18	"	June	"	"	.....	580.91
Aug.	13	"	July	"	"	327.73
Sept.	18	"	Aug.	"	"	823.09
Oct.	24	"	Sept.	"	"	735.00
Nov.	21	"	Oct.	"	"	299.92
Dec.	30	"	Nov.	"	"	307.98

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1920

Jan.	12	"	Bal. on Nov. Oil Run.....	364.44
"	15	"	Dec. Oil Run.....	295.06
Feb.	17	"	Jan. " "	533.19
March	16	"	Feb. " "	545.63
Total.....				\$21,531.68

SCHEDULE "B."

TAXES PAID BY BIG SESPE OIL COMPANY
BEGINNING MARCH 3, 1917.

		Back taxes.....	\$ 284.94
May	12	Frank M. Kelsey, Bond to Union Oil Co.....	20.00
June	13	Calif. Nat. Bank, Interest.....	17.50
Aug.	1	Farmers & Merchants Nat. Bank, Interest	7.00
Sept.	17	Calif. Nat. Bank, Interest.....	9.91
October	27	National Surety Co. Bond to Union Oil Co.....	20.00
1918			
Feb.	19	Secretary State.....	85.00
March	16	Calif. Nat. Bank, Interest.....	17.50
April	17	T. W. McGlinckey, County Tax..	150.03
June	27	Calif. Nat. Bank, Interest.....	15.74
July	15	State Treasure Petroleum Fund...	15.33
Nov.	23	T. W. McGlinckey, County Tax...	151.20
1919			
May	28	John P. Carter, tax.....	39.32
July	2	Calif. Nat. Bank, Interest.....	8.94

Aug.	8	John P. Carter, Tax.....	27.00
Nov.	10	Geo. J. Little, County Tax.....	156.66
1920			
Feb.	23	John P. Carter, tax.....	28.00
"	23	John P. Carter, income tax.....	267.87
Total.....			<u>\$1,321.94</u>

SCHEDULE "C."

CASH DISBURSED FOR SUPPLIES BY BIG SESPE OIL COMPANY BEGIN- NING MARCH 3rd, 1917.

1917

Nov.	10	Kerckhoff Cuzner Lumber Co.....	\$ 64.00
Dec.	7	Oil Well Supply Co.....	81.73
"	20	Haywood Lumber Co.....	292.70
"	20	Haywood Lumber Co.....	15.92

1918

Feb.	19	Oil Well Supply Co.....	134.07
Mch.	28	Oil Well Supply Co.....	1.76
Dec.	9	Smith Booth Usher Co.....	17.60

1919

Jan.	21	Smith Booth Usher Co.....	15.40
June	12	Harper & Reynolds.....	32.45
July	10	Smith Booth Usher Co.....	4.23
"	23	Fairbanks Morse & Co.....	4.62
Aug.	6	Fairbanks Morse & Co.....	2.81
"	6	E. A. Clampitt Co.....	29.65
"	6	Oil Well Supply Co.....	8.64
"	31	Smith Booth Usher Co.....	67.38

Nov. 21	Standard Oil Co.....	7.30
" 21	Curvan Bros.....	703.32
Total.....		<u>\$1,483.58</u>

SCHEDULE "D."

CASH DISBURSED BY THE BIG SESPE OIL
COMPANY BEGINNING MARCH 3rd, 1917.

1917

April	20	Star Stables, Voucher	
		No. 1.....	\$ 3.00
"	20	C. E. Ingalls, Voucher	
		No. 2.....	3.00
"	20	R. F. Labouge, Voucher	
		No. 3.....	15.00
"	20	Ventura Co-Op. Store,	
		Voucher No. 4.....	6.45
"	20	T. M. Hornada, Vouch-	
		er No. 5.....	75.00
			<u> \$ 102.45</u>
May	25	Moore's transfer, Vouch-	
		er No. 6.....	5.50
"	25	R. F. Laouge, Voucher	
		No. 7.....	8.75
"	25	Star Stables, Voucher	
		No. 8.....	2.50
"	25	Ventura Co-Op. Store,	
		Voucher No. 9.....	5.55
"	25	T. M. Hornada, Vouch-	
		er No. 10.....	131.30
			<u> 153.60</u>

June	19	Star Stables, Voucher		
		No. 11.....	2.00	
"	19	Ventura Co-Op. Store,		
		Voucher No. 12....	11.77	
"	19	T. M. Hornada, Vouch-		
		er No. 13.....	112.95	
			<hr/>	126.72
July	18	Star Stables, Voucher		
		No. 14.....	2.00	
"	18	Ventura Co-Op. Store,		
		Voucher No. 15.....	8.75	
"	18	C. E. Ingalls, Voucher		
		No. 16.....	4.50	
"	18	T. M. Hornada, Vouch-		
		er No. 17.....	107.60	
			<hr/>	122.85
August	10	Union Oil Co., Voucher		
		No. 18.....	7.50	
"	16	Ventura Co-Op. Store,		
		Voucher No. 19.....	16.37	
"	16	Albert Hodel, Voucher		
		No. 20.....	7.50	
"	16	T. M. Hornada, Vouch-		
		er No. 21.....	112.40	
			<hr/>	143.77
Sept.	17	L. A. Clampitt, Voucher		
		No. 22.....	21.70	
"	22	Star Stables, Voucher		
		No. 23.....	4.00	
"	22	Ventura Co-Op. Store,		
		Voucher No. 24.....	20.45	

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"	22 Albert Hodel, Voucher		
	No. 25.....	17.50	
"	22 T. M. Hornada, Voucher		
	No. 26.....	112.05	
		<hr/>	175.70
Oct.	27 T. M. Hornada, Voucher		
	No. 27.....	114.50	
"	27 Moores transfer, Voucher		
	No. 28.....	4.00	
"	27 Ventura Co-Op. Store,		
	Voucher No. 29.....	15.43	
		<hr/>	133.93
Nov.	17 T. M. Hornada, Voucher		
	No. 30.....	55.96	
"	17 Chas. Rehart. Voucher		
	No. 31	81.00	
"	17 Ventura Co-Op. Store,		
	Voucher No. 32.....	33.94	
		<hr/>	170.90
Dec.	20 Dr. I. D. Mills,.....	353.61	
"	20 T. M. Hornada, see		
	Back Bills	109.40	
"	20 Ventura Co-Op. Store,		
	Voucher No. 34.....	45.82	
"	26 Moores transfer, Voucher		
	No. 35.....	23.31	
"	26 E. Cole, Voucher No. 36	5.00	
"	26 V. A. Casner, Voucher		
	No. 37	6.50	
"	26 Albert Hodel, Voucher		
	No. 38	100.00	

	“	26 T. M. Hornada, Voucher No. 39.....	56.45	
		30 Filing Proof of labor	1.10	
				<hr/> 701.19
1918				
Jan.	21	John Andrew, Voucher No. 40.....	30.00	
		“ 25 Albert Hodel, see Voucher No. 38.....	41.25	
				<hr/> 71.25
Feb.	19	Ventura Co-Op. Store, Voucher No. 41.....	\$ 53.01	
“	19	Earl Cole, Voucher No. 42	10.50	
“	19	R. F. Labonge, Voucher No. 43	5.00	
“	19	Moore's transfer, Voucher No. 44.....	11.00	
“	19	T. M. Hornada, Voucher No. 45.....	111.95	
“	23	T. M. Hornada, Voucher No. 46.....	50.00	
				<hr/> 241.46
March	15	L. W. Williams, Voucher No. 47.....	285.00	
“	15	C. E. Ingalls, Voucher No. 48	3.00	
“	15	Moore's Transfer, Voucher No. 49...	7.00	
“	15	T. M. Hornada, Voucher No. 50.....	113.65	

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“	15 Earl Cole, Voucher No.		
	51	6.00	
“	15 E. A. Clampitt, Voucher		
	No. 52	10.32	
“	15 Dr. I. D. Mills.....	2.00	
“	16 T. M. Hornada, see		
	back bills	100.00	
“	16 L. A. Clampitt, Voucher		
	No. 53.....	151.18	
		<hr/>	678.15
April	17 C. E. Ingalls, Voucher		
	No. 54.....	3.00	
“	17 T. M. Hornada, Vouch-		
	er No. 55.....	115.30	
“	17 Ventura Co-Op. Store,		
	Voucher No. 56....	18.25	
		<hr/>	136.55
May	17 R. F. Labonge, Voucher		
	No. 57.....	4.75	
“	17 T. M. Hornada, Vouch-		
	er No. 58.....	117.35	
		<hr/>	122.10
June	27 L. A. Clampitt, Voucher		
	No. 59.....	150.00	
“	27 T. M. Hornada, Vouch-		
	er No. 60.....	117.10	
“	27 R. F. Labonge, Voucher		
	No. 61.....	2.00	
“	27 Dr. I. D. Mills, Back		
	salary	100.00	
		<hr/>	369.10

July	23	T. M. Hornada, Vouch- er No. 62.....	119.10	
"	23	C. E. Ingalls, Voucher No. 63.....	12.00	
			<hr/>	131.10
Aug.	15	T. M. Hornada, Vouch- er No. 64.....	118.25	
"	15	T. M. Hornada)	88.00	
"	15	L. A. Clampitt) B a c k salary	652.00	
"	15	Dr. I. D. Mills)	504.00	
			<hr/>	1362.25
Sept.	16	T. M. Hornada, Vouch- er No. 65.....	120.50	
			<hr/>	120.50
Oct.	15	T. M. Hornada, Vouch- er No. 66.....	124.30	
"	15	T. M. Hornada)	33.00	
"	15	L. A. Clampitt) b a c k salary	244.50	
"	15	Dr. I. D. Mills)	226.50	
			<hr/>	628.30
Nov.	22	T. M. Hornada, Vouch- er No. 67.....	136.70	136.70
Dec.	13	R. F. Labonge, Voucher No. 68.....	12.25	
"	17	T. M. Hornada, Vouch- er No. 69.....	126.40	
			<hr/>	138.65

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1919

Jan.	21	T. M. Hornada, Voucher No. 70.....	122.58	
			<hr/>	122.58
Feb.	11	T. M. Hornada, Voucher No. 71.....	129.50	
			<hr/>	129.50
March	20	T. M. Hornada, Voucher No. 72.....	116.75	
			<hr/>	116.75
April	19	Jas. McDonald, Voucher No. 73.....	42.00	
"	21	T. M. Hornada, Voucher No. 74.....	143.14	
			<hr/>	185.14
May	7	Jas. McDonald, Voucher No. 75.....	90.00	
"	21	T. M. Hornada, Voucher No. 76.....	150.00	
			<hr/>	240.00
1919				
June	12	Jas. McDonald, Voucher No. 77.....	\$ 93.00	
"	12	Lile Ingalls	26.00	
"	12	T. M. Hornada, see Voucher 76	131.34	
"	16	Lile Ingalls, Voucher No. 78.....	22.50	
"	28	Lee A. Phillips, Voucher No. 83.....	46.28	
			<hr/>	319.12

July	3 Jas. McDonald, Voucher No. 79.....	90.00	
"	18 T. M. Hornada, Voucher No. 80.....	118.26	
"	28 Jas. McDonald, Voucher No. 81.....	72.00	
"	28 Lee A. Phillips, Voucher No. 82.....	35.68	
		<hr/>	315.94
Aug.	6 V. A. Casner, Voucher No. 84.....	33.18	
"	11 Lee A. Phillips.....	35.68	
"	20 T. M. Hornada, Voucher No. 85.....	119.90	
"	20 Lee A. Phillips.....	7.01	
		<hr/>	195.77
Sept.	14 Lee A. Phillips, Voucher No. 86.....	13.48	
"	19 V. A. Casner, Voucher No. 87.....	4.50	
"	19 L. A. Clampitt, Voucher No. 88.....	81.80	
"	20 Lee A. Phillips, Voucher, No. 89.....	26.41	
"	21 T. M. Hornada, Voucher No. 90.....	120.85	
		<hr/>	247.04
Oct.	11 Lee A. Phillips, Voucher No. 91.....	16.34	
"	20 E. W. Ross, Voucher No. 92.....	58.50	

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"	21 T. M. Hornada, Voucher No. 93.....	125.46	
		<hr/>	200.30
Nov.	3 Frank Scott, Voucher No. 94.....	112.50	
"	3 Albert Andre, Voucher No. 95.....	39.00	
"	3 Lee A. Phillips, Groceries	22.42	
"	3 L. L. Rassmusson, Voucher No. 96.....	56.25	
"	8 D. C. Basolo, Voucher No. 97.....	55.52	
"	21 T. M. Hornada, Voucher No. 98.....	114.65	
"	28 Frank Scott, Voucher No. 99.....	63.00	
"	28 L. L. Rassmusson, Voucher No. 100....	31.50	
		<hr/>	494.84
Dec.	4 Lee A. Phillips, Voucher No. 101.....	18.08	
"	19 Jas. Udall, Voucher No. 102	45.75	
"	27 T. M. Hornada, Voucher No. 103.....	114.85	
		<hr/>	178.68
1920			
Jan.	5 Lee A. Phillips, Voucher No. 104.....	17.31	

	“	17 T. M. Hornada, Voucher No. 105.....	111.98	
		24 D. C. Basolo, coal.....	3.00	
		24 Lee A. Phillips, Voucher No. 106.....	25.13	
				157.42
Feb.		10 L. A. Clampitt, Voucher No. 107.....	74.45	
		18 T. M. Hornada, Voucher No. 108.....	100.00	
				174.45
March	“	2 Lee A. Phillips, Voucher No. 109.....	15.62	
		2 P. A. Assonty, labor...	10.00	
		17 Ventura Co-Op. Store..	6.40	
		17 T. M. Hornada, Voucher No. 110.....	108.75	
		17 Lee A. Phillips, Voucher No. 111.....	17.08	
				157.85
				9206.10
April		Unpaid Bills		
		L. W. Williams,		
		labor	232.00	
		Ferdinand Jon-		
		son, labor....	159.50	
		T. M. Hornada,		
		Back pay.....	600.00	
		L. A. Clampitt,		
		bill	96.00	

T. M. Hornada,

for March... 112.75

 Total... \$1200.25

\$10406.35

SCHEDULE "E".

INVENTORY AND APPRAISEMENT OF PERSONAL PROPERTY OF BIG SESPE OIL COMPANY.

3400 ft. 2" pipe line at 20¢.....	\$ 680.00
4000 " 2" pump tubing at 25¢.....	1000.00
4000 " 5/8 sucker rods at 8¢.....	320.00
4 - 1 3/4" working barrels complete at \$25.00	100.00
2 Derricks at \$350.00—	700.00
4 wells containing 4 stumps of casing consisting of 9-5/8 - 7 5/8 - 5 5/8 and 4 1/4 in at \$2000.00 each.....	8000.00
1 derrick	150.00
2 calf wheels at \$125.00.....	250.00
Cables	200.00
3 Crown pulleys at \$20.00.....	60.00
2 pump jacks at \$25.00.....	50.00
2 steam engines at \$250.00.....	500.00
1 - 25 horse boiler.....	100.00
1 Pumping plant	1500.00
1 gas engine "Foos".....	500.00
3 - 25 Bbl. galv. tanks at \$25.00.....	75.00
1 - 300 Bbl. wood tank.....	150.00
1 - 400 " " "	150.00

1 - 1½ H.P. gas engine	60.00
1 Power Pump and water line.....	175.00
2 sets rig irons	1000.00
1 string tools	250.00
1 lot small tools.....	250.00
1 4 room house)	
1 2 room house)	1000.00
1 6 hole cast range	50.00
1 lot kitchen furniture.....	30.00
3 cots and mattresses at \$13.50.....	40.50
1 iron cot and 2 mattresses.....	16.00
1 pump house and blacksmith shop....	500.00

Total valuation\$17856.50

Endorsed: Received copy of the within this 4th day of May 1920. Theodore Martin attorney for Ptff.

Filed May 4 1920 at 20 min. past 2 o'clock P. M.
Force Parker, Spec. Master I. Bateman Clerk.

[TITLE AS BEFORE.]

Memorandum Opinion by Special Master to Accompany Report on Accounting.

NATURE OF PROCEEDINGS.

This is a suit in equity in which the Complainant, Cochran, as an individual, seeks to have judicially determined and established his right to redeem certain oil lands from an execution sale made to the Defendant, the Big Sespe Oil Company, in pursuance of a judgment rendered in favor of that Company; and also

to have the amount of money required to effectuate such redemption ascertained and fixed.

The District Court, by the Interlocutory Decree rendered herein, has declared Complainant entitled to redeem these oil lands; and for the purpose of ascertaining the sum to be paid by Complainant to Defendant upon the redemption, has referred the proceedings to the Special Master for an accounting to be rendered before him, exhibiting and setting forth the production or proceeds of the operation of these lands while in the possession of the Defendant, to the end that the value of such production or proceeds may be offset or balanced as against the full amount of the redemption money which would be otherwise required of the Complainant.

From the proceedings had in the District Court, and particularly from the Interlocutory Decree rendered therein, it appears that, on March 3, 1917, pursuant to a Writ of Execution issued on a certain judgment against the Pacific Crude Oil Company, the rights of which Company it appears the Complainant herein has acquired by assignment, the Sheriff of Ventura County, State of California, who is the other Defendant in this suit, sold at public auction "all the estate, right, title and interest, which the said judgment debtor, Pacific Crude Oil Company, a corporation, had * * * of, in and to the certain real property in the Bill of Complaint in this (that) suit particularly described."

At the said execution sale, "all and every the aforesaid estate, right, title and interest of the said judg-

ment debtor, Pacific Crude Oil Company, a corporation, of, in and to" the said oil property, was sold to the Defendant herein, the Big Sespe Oil Company, for the sum of \$17,340.50. By the said Interlocutory Decree it further appears that ever since the said sale, all and every the said estate, right, title and interest has been "subject to redemption by the said judgment debtor, or its assignee, from the aforesaid sale thereof under execution, pursuant to, and in the form and manner" provided for by the Statutes of the State of California.

It also appears that at the time of the docketing of the aforementioned judgment against the Pacific Crude Oil Company, and at the time of the said execution sale on March 3, 1917, the legal title to the real property involved in this proceeding was vested solely in, and was held by "William H. Cochran as Trustee for Pacific Crude Oil Company", by virtue of two certain deeds each dated respectively March 30, 1914; and further that, "at the said times, the said judgment debtor, Pacific Crude Oil Company, neither had nor possessed any estate or any interest in the said real property, but had and possessed solely the right to enforce the performance of the trust in connection therewith against the said Trustee". Said "William H. Cochran as Trustee for Pacific Crude Oil Company" is the same person as the individual William H. Cochran, the Complainant in this proceeding. William H. Cochran as Trustee, however, is not a party hereto. Immediately after said execution sale, and on March 3,

1917, the said Big Sespe Oil Company entered upon and into the use and occupation of—that is, took actual physical possession of the said oil lands—and ever since said entry, continuously has been and now is in actual control and occupation thereof. It has operated the active oil producing wells thereon. It has extracted from said lands crude petroleum. It has regularly and continuously from month to month sold the production, and has collected and received monies therefor as shown in its “Statement of Account” filed with the Special Master. As stated in the Interlocutory Decree, such monies are “under the Laws and Statutes of the State of California relative thereto, a credit upon the redemption money likewise required to be paid” to effectuate the Complainant’s adjudged right of redemption.

It further appears from the Interlocutory Decree that “the said purchaser, Big Sespe Oil Company, was not entitled to such possession or occupation of the said real property; but was entitled to receive the rents and profits therefrom”. On March 1, 1918, and before the expiration of the twelve months after the execution sale of March 3, 1917, which is the statutory period of time (Code of Civil Procedures of the State of California, Section 702) ordinarily allowed for such redemption, the said judgment debtor, the Pacific Crude Oil Company, pursuant to the provisions of the California Statutes, demanded in writing of the said purchaser, the Big Sespe Oil Company, a written and verified statement of such monies, rents and profits as said purchaser had thus collected and received from

the said real property. Such statement, however, the Big Sespe Oil Company failed and refused to give. It failed and refused to furnish any statement whatever of such monies, rents and profits until it presented the "Statement of Account" in the proceedings before the Special Master.

Complainant, upon such failure and refusal, instituted this suit to compel an accounting.

STATEMENT OF FACTS PERTINENT TO THE ACCOUNTING.

I.

The real property involved in this suit comprises approximately 245 acres of proven oil producing lands, situated on the Big Sespe River in Ventura County, California, about six miles north from the town of Fillmore. Crude petroleum has been produced from these lands practically at all times for more than ten years last past.

II.

When the Big Sespe Oil Company took possession of the property on March 3, 1917, there were four wells drilled or sunk on the property, but only two of them were active in operation, or equipped with appliances for immediate pumping.

III.

The two inactive wells, which are known and referred to in these proceedings as Numbers 1 and 2 respectively, after having produced oil for several years, had at the time of the entry upon the lands by

the Big Sespe Oil Company, been temporarily abandoned, Number 1 in about the year 1913 and Number 2 in about the year 1912. Since such abandonment these wells have not been replaced "upon the pump". In other words they have not been producing wells. When so abandoned, these two wells were uncoupled. The casing and tubing and rods were left in the holes. The derricks remained standing over them. There were no rigs at either of these two wells. Generally, this was the condition and equipment of these two wells at the time of the entry and assumption of control on the part of the Big Sespe Oil Company.

IV.

The other two wells, known and referred to as Numbers 3 and 4, have produced oil continuously, that is, practically at all times, ever since they were sunk or drilled, which appears to have been in the year 1910. On March 3, 1917, 3 and 4 were fully equipped for the pumping and production of oil. Immediately upon taking possession of these oil lands on said March 3, 1917, the Defendant commenced to operate the same and proceeded to pump both of these two active wells; and excepting for a short period following a fire which swept over the property causing considerable destruction and loss, has at all times since so taking possession, except during intervals for repairs and other occasional rests, pumped the same. So by means of these two wells all the crude petroleum produced from this property since said March 3, 1917, that is, since the entry by the Defendant, has been pumped and pro-

duced. The proceeds from the sales of such production are set forth in Schedule "A" of Defendant's "Statement of Account" filed with the Special Master. These two wells at the time of the Defendant's entry were equipped with the usual and necessary derricks, casing, tubing and rods. There was also a rig at Number 3.

V.

This oil property at the time of said entry was also outfitted with the usual and necessary bunk houses and camp equipment, machinery plant, requisite pumping machinery and appliances, certain drilling apparatus, and with oil lines, water lines, storage tanks, and apparently with all appliances and equipment that were essential or necessary to the pumping of the wells on the property, and to the handling and disposition of the oil produced therefrom.

VI.

Sufficient and adequate water for the operation and pumping of these wells and for camp conveniences and necessities was available, and for many years had been obtained, from a stream which flowed upon or through the property. This stream was fed by two springs located north of the property but not on it. The stream flowed south through a gully or canyon. However, as it appears, during the dry season of the year 1914, this stream lacked sufficient volume to flow through the property above ground. So the water line was extended further to the north and to a point on the property where water was still flowing above

ground over a ledge of rocks. In this way, the requisite or necessary amount of water for camp and operating purposes was procured. Lower down on the property and some four hundred feet southerly from the camp, there was also an open spring from which an ample supply of water could be obtained. This lower spring, however, does not seem to have been put to regular use until the summer of 1919.

VII.

The approach to these oil lands is made from the south by a road passing through what is known as the "Kentuck" property. From the "Kentuck" property a private road which had been in existence and continuous use for many years ran up into and through this property up to the camp. During the annual rainy seasons, this road would be more or less washed out. It would then be repaired and filled in; and it had apparently fulfilled all requirements of the property, and its operation not only prior to March 3, 1917, but also at all times prior to the summer of 1919.

VIII.

On October 4, 1917, a fire swept over this property and totally destroyed all of the derricks and rigs at the four wells. It also caused damage to their machinery and equipment, and destroyed and damaged other property on the premises. Defendant thereupon erected new derricks at the wells Numbers 3 and 4 which had, until the fire, been in active operation, and also at the well Number 1, which, prior to the fire, had been idle—that is to say—not in active operation. Defendant also

repaired and replaced much of the other damaged and destroyed equipment.

IX.

Since March 3, 1917, the Defendant, the Big Sespe Oil Company, has expended various sums of money in the operation and maintenance of the oil wells on the property and in the production and marketing of the oil or crude petroleum produced therefrom. The Defendant has also incurred expense for labor performed on the property and for repairs and improvements thereon, and for new equipment, appliances and materials, and for the replacement of old equipment, appliances and materials. These expenditures as well as payments made for taxes, licenses, fees and penalties and for overhead expenses, are itemized and set forth in Defendant's "Statement of Account" filed with the Special Master.

Defendant claims that it should be credited with, and the Complainant should be charged for, all these expenditures and outlays upon this accounting. The Complainant contends that allowance should be made only for the amounts paid out on account of taxes.

MEMORANDUM OPINION

The Special Master is unable to discover in the record of the proceedings in this case, either in the District Court or upon the hearings before him, any evidence to justify the entry upon, or the use and operation of these oil lands by the Big Sespe Oil Company; nor, upon the hearings before the Special Master, does there ap-

pear to have been made at any time any serious assertion that such entry, use and operation were sustained by any legal right. Further, the Interlocutory Decree, in Paragraph "Eighth" thereof, declares: "The said purchaser, Big Sespe Oil Company, was not entitled to such possession or occupation of the said real property." It seems, therefore, that the Defendant's possession, occupation and operation of the property was illegal, and that the Defendant was a trespasser thereon.

The nature of the accounting presented by the Defendant is twofold in aspect: namely—First, the debits to be charged against the Defendant for the use and occupation of these oil lands—that is, for the oil extracted from the lands and sold: Secondly, the credits to be allowed to the Defendant for expenses or outlay in connection with the occupation and operation of these oil properties.

Defendant claims, particularly in its "Statement of Account," that it should be charged only with, and should be obliged to account only for, a royalty on "the gross receipts from the sale of oil" which it has actually extracted from these lands. This claim is based on an alleged custom prevailing and established, as asserted by Defendant, in the mining district in which these lands are situated, and is also based, as the Special Master understands Defendant's contention, on the theory that such royalty is the measure of "the value of the use and occupation" of the lands within the intent and meaning of the California statute relative to redemptions. (The Code of Civil Procedure of the State

of California, Section 707) The said Statute relating to redemptions provides that during the running of the time within which redemption from execution sales may be made, "the purchaser * * * is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof."

The Special Master is of the opinion that the last quoted provision of this Section 707 in respect to "the value of the use and occupation" of the premises does not apply to the mutual relations existing between the parties to this suit. The Special Master is of the opinion that the extensive argument and reasoning contained in the Complainant's elaborate brief on this subject is sound. The provision in said Section 707 relating to the value of the use and occupation gives the purchaser a right of recovery from a "tenant in possession." The Special Master does not think that this provision relates to a purchaser's liability for his own possession and occupation of the premises.

Further, the Section also prescribes what the purchaser must account for in case of redemption, as follows: "When any rents or profits have been received by the * * * purchaser * * * the amounts of such rents and profits shall be a credit upon the redemption money to be paid;" Since said March 3, 1917, the Defendant has continued to extract crude petroleum from these oil lands, and has received regular monthly payments therefor as shown by Schedule "A" of its "Statement of Account" filed with the Special Master.

In *Harris vs. Reynolds*, 13 Cal. 515, Plaintiff had purchased at an execution sale a certain water or irrigating ditch, the possession of which had been retained by the Defendant, the owner thereof, and from which the Defendant had continued to sell water. The action was brought to recover under said Section 707 of the California Code of Civil Procedure, the value of the water sold—that is, the value of the rents and profits of the ditch. The Court, after first holding that “the profits consisted of many sales and transactions” also held that the Defendant should account for the proceeds of the sales of the water from the ditch.

Further, the Interlocutory Decree in Paragraph “Ninth” thereof declares:- “that such moneys, rents and profits as have been thus collected and received by the said purchaser, Big Sespe Oil Company, then were, always have been, and still are, under the Laws and Statutes of the State of California relative thereto, a credit upon the redemption money likewise required to be paid, * * *”

It, therefore, seems that the Defendant should be charged with the full amount of the monies received by it as set forth in Schedule “A” of its “Statement of Account.”

On the other hand, the Complainant contends that the Defendant should be charged not only with the total amount of the sales of oil made by it, but also for such additional amount as this oil producing property would have earned if it had been prudently and providently managed and operated by the Defendant. In

support of this contention the Complainant asserts that it is shown by the evidence that ever since the commencement of this suit, Defendant has deliberately and wilfully failed and neglected to operate the pumps installed upon the property as a reasonably prudent owner would have operated them; that by reason of such failure and neglect, the Defendant has not extracted from the property, nor have the wells produced, all the crude petroleum which could and should have been extracted and produced; that by reason of such failure and neglect, extensive profits have been lost to the Complainant upon this accounting.

The Special Master does not agree with this contention or with the theory or doctrine thus propounded for various reasons:- First, that such profits are not ultimately lost to the Complainant but are preserved for the future; Secondly, that such profits are speculative, remote and doubtful; Thirdly, it does not seem to the Special Master that Defendant was under a legal obligation to be measured by the course which a reasonably prudent and provident owner would pursue; Fourthly, it seems unreasonable and inequitable for the Complainant to insist that the Defendant should be held, by reason of its occupation of these properties, under obligation to operate them and at the same time, also to insist that the Defendant should not be allowed or credited with the expenses of such operation. If the respondent is to be held responsible for the full or normal capacity of the property for production, it seems he should be allowed for the expenses of operation in attaining such production.

The contention and the question raised thereby is presented in this Report to the end that the Complainant may, if he deems fit, again insist upon it in the District Court upon the submission of this Report.

Recurring to the nature of the Defendant's occupation and use of the premises, and to the extent of the debits with which it should be charged and the credits with which it should be allowed, the Special Master is of the opinion, as is above stated, that the status of the Defendant was that of a trespasser on the property.

As to the liability of a trespasser, under the circumstances involved, the rule seems to be that a trespasser is not entitled to any reimbursement, credit or allowance for any monies which he may have put into the property, whether they be for repairs, improvements, operation, development, or the production and marketing of the product arising or extracted therefrom, or for any other cause or purpose whatsoever, excepting the payment of taxes, which latter allowance or credit is specifically provided for by the Statute relating to redemptions of this kind.

The rule presses hard upon the Defendant in this case, but there seems to the Special Master no escape from the inexorable logic of the authorities and from the rules and principles of law therein prescribed.

In *Mahoney vs. Bostwick*, 96 Cal. 53: 30 Pac. 1020: the California Supreme Court states the rule in the following language: (96 Cal. p. 59)

“The Court finds that appellant wrongfully entered upon the premises, and ousted the plaintiff

from the possession thereof, and in such a case it is very clear to us that the appellant is liable to be charged for rents and profits, precisely the same as any other disseizor would be. And he is not entitled to any accounting to determine how much he may have actually realized from this wrongful occupation, after deducting the necessary expenses of carrying on the farm."

and again [(96 Cal. p. 59):

"The Court did not err in refusing to credit defendant with the value of the checks, ditching, and fencing placed by him on the premises while he was wrongfully in possession and holding adversely to plaintiff. The possession of defendant, and all that he did upon the land, were acts hostile to the title of plaintiff, and plaintiff is not required, in this action, upon any principle of law or equity, to account to defendant for the value of the improvements thus made by him."

To the same effect is *Malone vs. Roy*, 107 Cal. 518: 40 Pac. 1040.

The rule is also laid down by the Supreme Court of the State of California, in *St. Clair vs. Cash Gold Mining & Milling Co.*, 47 Pac. 466, as follows:

"Defendants * * may not reduce the amount of recovery by proving the cost of mining. Having been guilty of a wilful trespass, they shall reap no benefit from their own wrong, and shall pay the value of the ore without credit for the labor

incident to its extraction. This doctrine is too well settled to admit of controversy." (Cases cited.)

Other authorities cited by the Complainant are:-

E. E. Bolles Woodenware Co. vs. U. S., 106 U. S. 432, 27 L. Ed. 230;

Benson Mining & Smelting Co. vs. Alta Mining and Smelting Co., 145 U. S. 428, 36 L. Ed. 762;

Durant Min. Co. vs. Percy Consol. Min. Co., 93 Fed. 166;

U. S. vs. Homestead Mining Co., 117 Fed. 481.

This rule has been somewhat modified in its application to "innocent trespassers." But such modification has been made only where it was shown that the party entered upon the property through some bona fide mistake, or under a proven wrong conception of his right so to do. In such cases, it seems that no allowance has been made for other than the actual and necessary expenditures for the production and marketing of the product arising from the property. (See the cases cited and quoted in the Complainant's Brief) The recent case of U. S. vs Chanslor-Canfield Midway Oil Co., decided this last spring by the United States Circuit Court of Appeals for the Ninth Circuit, is, in point, to this effect. The case has not as yet been officially reported. Although the Special Master is of the opinion that the Defendant is not entitled to credit for expenditures other than for taxes, which credit is provided for by the Statute relating to redemption, nevertheless, all of the Defendant's expenditures are listed,

classified and itemized in the Special Master's report to the end that the allowance or disallowance by him of each item may be passed upon with approval or disapproval by the District Court.

In respect to penalties and interest:- It is provided by Section 702 of the Code of Civil Procedure of the State of California, that upon redemption, the purchaser shall be paid the amount of his purchase "with one per cent per month thereon in addition, up to the time of redemption."

On March 1, 1918, and before the expiration of the time allowed by the Statute for redemption, a written demand was made on Defendant for a written and verified statement of the amount of the rents and profits which the Defendant had then already collected and received through the operation of this property. The demand was made pursuant to the provisions of the redemption Statute and particularly of Section 707 of the Code of Civil Procedure of the State of California. The statement was necessary to the Complainant in order that the Complainant might know the sum required of him to be paid to effectuate the redemption; and the Complainant was entitled to such a statement. Such statement was not furnished, but was refused by the Defendant to the Complainant. This suit was thereupon instituted. The question therefore arises:- Should the Complainant be charged at the rate of one per cent per month on the purchase money for the period subsequent to the refusal by the Defendant to furnish the statement required by the Statute.

A similar question was presented to the California Supreme Court in the case of *Benson vs. Bunting*, 141 Cal. 462, 75 Pac. 59.

In the opinion, the Supreme Court says (141 Cal. p. 465):

“Appellant contends that the Court erred in fixing the amount of interest which respondents must pay in order to redeem, and that more interest should have been required. The court allowed two per cent per month interest during the six months statutory period of redemption, and thereafter the legal rate of interest of seven per cent per annum. The contention of appellant is, that two percent per month should have been allowed until the time of actual redemption under the judgment; but this contention is not maintainable. Appellant having denied the right of redemption and prevented the exercise of it, cannot recover the extraordinary interest which respondents would have avoided if they could have exercised their right of redemption. Indeed, respondents argue with great force that they should not have been required to pay the seven per cent per annum interest, or any interest at all, during the long period after the repudiation of their right to redeem; but respondents are not appealing, and we cannot consider any alleged error against them.”

On this accounting it therefore seems that the Defendant should be allowed this statutory monthly penalty or interest only up to April 1, 1918, or one month

after the written demand for a statement of rents and profits; one month being the period within which such statement might be furnished under the Statute and before any suit for an accounting could be instituted. After that date it seems no charge of interest at any rate should be made against the Complainant.

It seems that Defendant should be charged with interest at the legal rate of seven per cent per annum on the several net amounts collected and received by it from the sale of the oil which it extracted from the property. Such interest should be calculated from the dates of Defendant's receipt of the respective payments and up to the day of the date of the entry of the Final Decree herein. If Complainant had made partial payments to the Defendant on account of the redemption money in the amounts and at the times of the sales of oil made by the Defendant, and of the receipts of money by the Defendant upon such sales, it would seem that the Complainant would be entitled to credit as against the redemption money in the amount of the sums received by the Defendant upon such sales. In such case the monthly interest or penalty at one per cent per month would have been calculated only on the balance of the redemption money remaining unpaid. The California Statute relating to redemption provides that the interest or penalty shall be calculated "monthly" on the purchase money to be repaid as the cost of redemption. The Defendant in this suit has "monthly" collected the proceeds from the sales of oil. It seems, therefore, reasonable and equitable that in the adjust-

ment of the accounts between the parties, monthly rests should be made in the calculation of interest.

The Special Master has found and reports accordingly.

There is a question involved in this case which does not seem to have been raised. If, as asserted by the Complainant, the Defendant acquired no rights in or to these oil lands, by virtue of the execution sale, because the title was vested in Mr. Cochran as Trustee, whom the judgment did not affect, and if Cochran as Trustee is the legal owner of the lands, and of the oil extracted therefrom, then why should the Defendant account in this action to Cochran individually. He has not acquired the rights of Cochran as Trustee. Should not the Defendant account to the Trustee rather than to the Assignee of the Beneficiary? Further, in judicial contemplation there may exist equities as between the Big Sespe Oil Company and Cochran as Trustee, not existing or provable in this suit, which equities may entitle the Big Sespe Oil Company to an allowance for or repayment of its beneficial expenditures and outlay. Of course the proceeds of the oil extracted ultimately belong to the Pacific Crude Oil Company as Beneficiary under the Trust. Nevertheless, does not the accounting rendered herein to the Assignee of the Beneficiary, instead of to the Trustee, technically ignore the existence of the Trusteeship? It may be that it is the Trustee who alone is entitled to an accounting for the oil extracted from the property, the title to which is vested in him. In such an accounting new equities may arise

in respect to the claim for allowance for expenditures and outlay. And further, is there not even now vested in the Trustee a cause of action for an accounting or even for damages as against the Big Sespe Oil Company?

Dated: Los Angeles, California, August 30th, 1920.

FORCE PARKER,
Special Master.

Endorsed.

Filed Sep. 7, 1920. Chas. N. Williams, Clerk; by P. W. Kerr, Deputy Clerk.

[TITLE AS BEFORE.]

Special Master's Report on Disclosure and Accounting of Defendant, Big Sespe Oil Company.

To the Honorable the Judges of the District Court of the United States, for the Southern District of California.

This suit having been referred by the Interlocutory Decree herein, to me, Force Parker, Esq., as Special Master, *Poc Hac Vice*, for an Accounting and Disclosure by the Defendant, Big Sespe Oil Company, of such monies, rents and profits as said Defendant has collected and received since the 3rd day of March, 1917, from the real property in the Bill of Complaint herein particularly described, in order that such monies, rents and profits may be credited upon the money, if any, which Complainant will be required to pay to make and effectuate the certain redemption also adjudged to him

by the said Interlocutory Decree; and the said Master having been also directed and ordered by the said Interlocutory Decree to "state a full account in the premises, upon the basis of" the said Decree: said Special Master now respectfully makes and submits the following as his Report on the hearing and proceedings thus had before him, and also on the disclosure and accounting so ordered herein.

The Master was attended in these proceedings by Complainant, and by the Defendant, Big Sespe Oil Company; and also by their respective Solicitors and Counsel.

Defendant, Big Sespe Oil Company, brought in and filed in these proceedings before the Master, its "Statement of Account," together with certain "Vouchers" in support thereof. Such "Statement of Account" covers Defendant's operation of the oil lands involved for the period from March 3, 1917, only up to and including the month of February, 1920. Said statement is not verified by said Defendant or by any of its officers. Said Statement and Vouchers are herewith submitted and filed with this Report.

Complainant, not being satisfied with the Defendant's Account as so brought in, examined certain of the Defendant's officers, *viva voce*, before the Master relative thereto. Other testimony was also adduced by both of the parties, who also respectively introduced in evidence various papers, instruments, documents, books and statements.

A full record of the proceedings was taken down by various Court Reporters duly appointed and sworn by

the Master for that purpose. The Reporters' Transcripts, together with all the aforementioned Exhibits, are also submitted and filed with this Report.

These proceedings were finally submitted to the Master on the written Argument and Brief of the Solicitor and Counsel for Complainant, also filed herewith. Defendant did not present any argument, either oral or written; nor did it file any Brief, although desired by the Master and although an extension of time as requested was granted.

The Master has given due consideration to all the proceedings, evidence, proof and arguments herein. He has been impressed and greatly assisted by the extensive and elaborate Brief and also by certain proposed findings submitted in behalf of the Complainant. The Master makes, finds, and states the following as his findings and conclusions, to-wit:

I.

THE OIL WELLS AND THE PRODUCT EXTRACTED AND SOLD BY THE DEFENDANT THEREFROM.

The property involved in this suit is particularly described in the Bill of Complaint herein, and comprises some 245 acres of proven oil lands situated in Ventura County, State of California, some six miles north from the Town of Fillmore. Four oil producing wells were drilled thereon some time previous to 1910.

Two of these wells, known as Numbers 1 and 2, after producing for some time, were uncoupled approximately

about the year 1912, and were then, temporarily at least, abandoned. The derricks, casing, tubing and rods were left in place at and in the respective wells. Since then neither of these two wells has been pumped; nor have they been otherwise producing.

Wells Numbers 3 and 4 have been practically continuously on the pump, or capable of being so, and likewise producing since the time that they were brought in. On March 3, 1917, they were fully equipped for pumping, and were also then capable of producing crude petroleum or oil.

On March 3, 1917, the Defendant, Big Sespe Oil Company, entered upon and took possession of this real property; and forthwith proceeded to pump these wells 3 and 4; and, excepting for the period from October 4, 1917, to about January 2, 1918, have practically continuously pumped the same.

On October 4, 1917, a fire, which on that day swept over this property, totally destroyed, amongst other things, the derricks, rigs, and certain of the pumping equipment at these last two mentioned wells; and also seriously damaged other of their equipment. As a consequence, it was not possible to pump these two wells, or either of them, between October 4, 1917, and about January 2, 1918, when Number 3 was restored to the pump. Pumping was resumed at Number 4 well about January 7, 1918. In the meantime, Defendant had erected new derricks in the place of those which had been destroyed; and had also repaired or replaced the pumping equipment.

Since March 3, 1917, and up to and including the month of February, 1920—which is the last month covered by the “Statement of Account”—Defendant has extracted, pumped and produced from this real property, an aggregate of 17,737.30 barrels of crude petroleum, which ranged in gravity from about 19° to 21°, Baume Test. (Summary of Oil Runs—Complt’s Exhibit No. 8)

Defendant has regularly and continuously sold such crude petroleum as had thus been produced at prices ranging from 75c per barrel in March, 1917, to \$1.36 per barrel in February, 1920. (Summary of Oil Runs—Complt’s Exhibit No. 8.)

Such sales were made in the several respective months appearing in the following statement; and the Defendant was paid therefor on the respective days, and in the respective amounts likewise therein set forth: (Schedule “A”—“Statement of Account”):

1917						Cr.
April	20	Cash	March	Oil Run.....	\$	329.09
May	26	“	April	“ “		167.77
June	16	“	May	“ “		526.00
July	17	“	June	“ “		638.78
August	16	“	July	“ “		436.16
Sept.	17	“	Aug.	“ “		643.58
Oct.	26	“	Sept.	“ “		633.63

Derricks burned in October.

1918						
Feb.	19	Cash	Jan.	Oil Run.....	\$	638.80
Mch.	16	“	Feb.	“ “		700.27

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April	16	"	March	"	"	448.01
May	17	"	April	"	"	698.46
June	26	"	May	"	"	903.91
July	23	"	June	"	"	814.02
Aug.	15	"	July	"	"	.....	825.63
Sept.	15	"	Aug.	"	"	.....	879.29
Oct.	15	"	Sept.	"	"	.....	853.59
Nov.	22	"	Oct.	"	"	.....	817.86
Dec.	16	"	Nov.	"	"	.....	832.60
1919							
Jan;	21	"	Dec.	"	"	.....	872.84
Feb.	11	"	Jan.	"	"	.....	689.03
March	19	"	Feb.	"	"	.....	870.44
April	21	"	March	"	"	.....	891.25
May	17	"	April	"	"	.....	629.58
June	18	"	May	"	"	.....	978.14
July	18	"	June	"	"	.....	580.91
Aug.	13	"	July	"	"	.....	327.73
Sept.	18	"	Aug.	"	"	.....	823.09
Oct.	24	"	Sept.	"	"	.....	735.00
Nov.	21	"	Oct.	"	"	.....	299.92
Dec.	30	"	Nov.	"	"	.....	307.98
1920							
Jan.	12	"	Bal. on Nov. Oil Run.....				364.44
"	15	"	Dec. Oil Run.....				295.06
Feb.	17	"	Jan.	"	"	.....	533.19
March	16	"	Feb.	"	"	.....	545.63

Total.....\$21,531.68

These monies have been collected and received by Defendant, Big Sespe Oil Company, as stated, from

its sales of the crude petroleum which it has extracted and produced from this real property. Such monies or proceeds constitute rents or profits which said Defendant has received from the said property, since March 3, 1917; and, as such rents or profits, are credits upon the money required to be paid by Complainant, to make and effect the redemption adjudged to him by the Interlocutory Decreed herein.

The amounts of each and every of the said several respective monies or proceeds should be credited to Complainant, upon said redemption money, as and of the several respective days and dates of the receipt thereof by Defendant.

II.

TAXES ON THE REALTY.

Since March 3, 1917, Defendant has paid the various State and County Taxes levied against the real property involved in this suit, as follows (Schedule "B"—"Statement of Account"):

	Amount.
March 14, 1917—Taxes for 1915	\$157.80
“ 12, “ “ “ 1916 - 1917	127.14
April 17, 1918 “ “ 1917 - 1918	138.18
July 15, 1918 “ “ Petroleum Fund	15.33
Nov. 23, 1918 “ “ 1918 - 1919	151.20
“ 10, 1919 “ “ 1919 - 1920	156.66
Total.....	\$746.31

These taxes were necessarily and properly paid by Defendant; and Defendant should be allowed credit

for the payments thereof, as and of the several respective days and dates of said payments.

Defendant also paid \$11.85 for interest or as a penalty, for the delayed payment of the taxes for 1917-1918. Defendant has conceded, which seems to be the fact, that this delay was due to Defendant's own neglect. Complainant, therefore, should not be charged therewith. This payment should not be allowed as a credit to Defendant.

III.

MISCELLANEOUS TAXES.

Defendant sets up in Schedule "B" of its "Statement of Account," the following payments to John P. Carter, the United States Collector of Internal Revenue for this District:

May 28, 1919.....	\$ 39.32
Aug. 8, 1919.....	27.00
Feb. 23, 1920.....	28.00
Feb. 23, 1920.....	267.87
Total	<u>\$362.19</u>

No Voucher nor proof has been presented for the stated payments of \$39.32 and \$28.00.

The \$27.00 payment was for an "Additional Capital Stock Tax" on Defendant's own capital stock. (Complt's Exhibit No. 7.)

The \$267.87 was in payment to the United States, of the tax assessed against Defendant on the income which it had received from the sale of the oil produced from this property.

Defendant, on February 19, 1918, also paid the Secretary of State of the State of California, \$85, for "Corporation License Tax," \$75, and \$10 penalty thereon. (Complt's Exhibit No. 3.) This tax was for Defendant's own license to do business in that State.

None of these stated expenditures, which total \$447.19, should be allowed to Defendant, as they either are entirely unsupported by any proof of such payments having been made, or are in payment of taxes on Defendant's own business and affairs, in no way connected with the subject matter of this suit or of these proceedings.

IV.

BOND PREMIUMS.

Before the Union Oil Company would pay for the oil which it had purchased from Defendant, and which Defendant was producing and selling from this property immediately subsequent to March 3, 1917, it required and demanded a certain Bond of Indemnity. Defendant furnished such bond; and paid the following certain premiums therefor (Schedule "B"—"Statement of Account"):

May. 12, 1917 Kelsey	\$20
Oct. 27, 1917 National Surety Co.	20
Total	<hr/> \$40

In the payment of June 19, 1917, to Hornada, Voucher No. 13, there is included \$3.40 paid by Hornada for his railroad fare to Los Angeles in connection with the obtaining of this Bond.

This Bond was apparently required because of doubt on the part of the Union Oil Company as to whether the occupation and operation of this real property by the Defendant and its sale of the oil produced therefrom, during the running of the statutory time for redemption from the execution sale of March 3, 1917, was lawful.

Defendant should not be allowed credit for these payments.

V.

INTEREST ON BANK LOANS.

Defendant borrowed several certain sums of money from two different banks; and, in its "Statement of Account," Schedule "B," sets forth the various payments of interest which it has made on such loans. These items are as follows:

June 13, 1917	Calif. Nat. Bank	\$17.50
Sept. 17,	" " " "	9.91
Mar. 16, 1918	" " "	17.50
June 27,	" " "	15.74
July 2, 1919	" " "	8.94
Aug. 1, 1917	Farmers & Mer. Nat. Bank	7.00
Total		\$76.59

A large part of these loans was expended in the payment of attorneys fees to Defendant's Attorney in the prosecution of Defendants' litigation; for Sheriff's costs on the execution sale of March 3, 1917; and to the repayment to Defendant's Treasurer of "money advanced at different times," but there is no showing as to when

advanced, or for what, or the necessity therefor; and \$284.94 went to the payment of the 1915, and 1916-1917 taxes on the realty, for which an allowance and credit is made herein to the Defendant. The balance of the monies arising from these loans is unexplained and unaccounted for.

Defendant's books also show that, at the times these several loans were obtained, Defendant had sufficient monies on hand from the sale of the oil produced on this property, fully to pay all proper and current bills and obligations.

These items of interest are not properly allowable to Defendant, and should not be credited to it.

VI.

OPERATION OF THE REALTY.

Subsequent to the drilling of the four oil wells, which were completed some time previous to 1910, the operations and work on this real property up to March 3, 1917, had been confined exclusively to the extraction and production of crude petroleum therefrom, and by means of all or such of these four wells as, from time to time, were on the pump. Such operation, or pumping of the wells had always been conducted and done by one man, who lived at the camp on the property. Whenever extra heavy repairs, or the pulling of the wells required it, additional help was temporarily employed for the particular purpose and necessity.

On March 3, 1917, when Defendant took possession of this real property, the only operation then going on

thereon, and the only operation thereof that was essential and necessary to the property as it then existed, was the pumping of the wells numbers 3 and 4, and Defendant then and there immediately commenced such pumping.

A.

HORNADA'S SALARY.

On March 3, 1917, Defendant employed one T. M. Hornada to attend to the pumping of these wells; and also placed him in full charge of the property. Said Hornada ever since then continuously has been, and still is so employed and engaged. Mr. Hornada is also one of the three principal stockholders of the Defendant Company; and also its Assistant Secretary.

At that time, Hornada was employed at an agreed salary or compensation of \$100 per month; Defendant also agreeing to pay for all his necessary provisions at the camp on the property, and also for his transportation from Fillmore up to the property, whenever he had been necessarily absent therefrom.

Since March 3, 1917, and up to and including the month of February, 1920 (which is the last month covered by Defendant's "Statement of Account"), Defendant has regularly paid Hornada this agreed monthly salary of \$100, or a total of \$3,600. And Hornada has likewise regularly received and accepted such payments as and in full payment and satisfaction of his said services during that time.

As also appears amongst the "Unpaid Bills" in the "Statement of Account," Hornada has not been paid his March, 1920, salary of \$100.

B.

HORNADA'S UNPAID "BACK PAY."

In Schedule "D" of its "Statement of Account," and under the heading of "Unpaid Bills," Defendant presents an item of \$600 said to be due and unpaid to Hornada for "Back Pay."

Mr. Hornada claims this to be due to him, in addition to his already paid regular monthly salary of \$100, under some oral understanding or agreement which he alone testifies he had with Mr. Clampitt, the President of the defendant Company, in the latter part of December, 1918.

The evidence fails legally to show or establish any such agreement. And by the resolution of Defendant's Directors, which appears in the Minutes of their meeting of December 16, 1918, Hornada's salary was then continued and fixed at \$100 per month. Hornada's regular monthly statements ever since then have been rendered for such amount; and the same have been paid to him in full, and likewise accepted by him.

This unpaid item of \$600 should not be allowed as a credit to Defendant.

C.

HORNADA'S PROVISIONS.

As part of Hornada's compensation for his services in connection with this real property, Defendant also

agreed to pay for his necessary provisions while he was living at the camp on the property.

The charges for these provisions are included in the various payments which appear in Schedule "D" of the "Statement of Account," to "Ventura Co-Op. Store," "Lee A. Phillips," and in certain of Hornada's monthly statements.

Such payments are in the following totals:

Ventura Co-Op. Store	\$242.19
Lee A. Phillips	296.52
Hornada	392.93
<hr/>	
Aggregate Total	\$931.64

These payments were for provisions furnished not only for Hornada personally, but also for the various other employees and laborers, who were employed by Defendant in various kinds of work in and about the property, including the erection and making of certain improvements thereon. The items for Hornada's own provisions are in no way separated from those for the other employees; and Defendant has not attempted any segregation thereof. Nor has any proof been offered which would allow a basis for any finding as to the amount paid exclusively for Hornada's provisions.

D.

HORNADA'S TRANSPORTATION.

In addition to his monthly salary of \$100, and the payment for his necessary provisions at the camp, Defendant also agreed to pay the cost or expense of Hor-

nada's transportation from Fillmore up to this property—a distance of some six miles—whenever he was returning thereto, after necessary absences.

The payments which Defendant has made for such transportation, are included in the various payments set forth in Schedule "D" of the "Statement of Account" to "Star Stables," and to "Moore's Transfer," and also in certain of Hornada's monthly statements. The totals of such several payments are as follows:

To Star Stables	\$ 13.50
To Moore Transfer	50.81
To Hornada	74.00
	<hr/>
Aggregate Total	\$138.31

These payments include not only the charges for such transportation of Hornada, but also the like transportation of many other employees from time to time on the property, and also the hauling of miscellaneous supplies, materials and equipment. Defendant has not separated or classified the same, so as to show what items were paid for Hornada's transportation, or whether they were for proper and necessary purposes.

E.

REPAIRS.

In the course of its pumping of the wells on this property, Defendant has caused various repairs to be made on the pumping machinery and equipment. Defendant's expenditures in connection therewith, appear

in Schedules "C" and "D" of the "Statement of Account." The only payments which are shown to have been for repairs necessary to the pumping of the wells or to the preservation of the property itself, even under the construction of the proof, most favorable to Defendant, are as follows:

SCHEDULE "C."

Smith Booth Usher Co.	Dec. 9, 1918	\$17.60
" " " "	Jan. 21, 1919	15.40
" " " "	Jul. 10, 1919	4.23
" " " "	Aug. 31, 1919	7.38
Fairbanks Morse & Co.	Jul. 23, 1919	4.62
" " "	Aug. 6, 1919	2.81
Total		<hr/> \$52.04

SCHEDULE "D."

(Labor)

C. E. Ingalls	April 20, 1917	\$ 3.00
"	April 17, 1918	3.00
"	July 23, 1918	12.00
Labonge	April 20, 1917	15.00
Hodel	Dec. 26, 1917	40.00
"	Aug. 16, 1917	7.50
"	Sept. 22, 1917	17.50
Casner	Aug. 6, 1919	26.18
Lile Ingalls	June 12, 1919	11.00
Rassmusson	Nov. 28, 1919	31.50
Total		<hr/> \$166.68

(HORNADA'S STATEMENTS)

VOUCHER	LABOR	MATERIALS	REPAIRS
No. 13	\$ 5.00	\$.85	\$.40
17	3.75	.60	
21	11.50		
26	6.25		1.70
27	11.40		
No. 39		\$ 1.50	
45	5.00		
50			1.30
62		1.80	
65		2.10	
66		5.00	
67	14.00	1.70	
69			1.65
70		.85	
71			7.00
72	3.00		
74		3.40	
80		.96	13.00
85	3.50	9.90	
90	2.50		
93	1.50	2.97	14.04
98			4.75
103	4.50		2.20
105		.60	3.35
110	3.50		
Unpaid	4.50		
Totals	<u>\$79.90</u>	<u>\$32.23</u>	<u>\$49.39</u>
Aggregate Totals			\$380.24

F

In its operation of this property, Defendant also incurred and paid the following

MISCELLANEOUS EXPENSES

Sched.	"C"	Nov. 21, 1919	Standard Oil Co.	\$	7.30
"	"D"	Feb. 19, 1918	Labonge		5.00
		May 17, "	"		4.75
		June 27, "	"		2.00
		Dec. 13, "	"		12.25
		Sept. 17, 1917	Clampitt		21.70
		Mar. 16, 1918	"		151.18
		Aug. 10, 1917	Union Oil Co.		7.50
		Dec. 30, 1917	Filing Proof of		
			Labor		1.10
		Jan. 24, 1920	Basolo		3.00
		Dec. 19, 1919	Udall		3.75
			(Hornada's Statements)		
Voucher	#10	Freight on engine			6.30
"	30	"			2.33
"	70	Express			.48
"	76	Freight			2.16
		Team			2.50
"	98	Teaming			3.75
Miscellaneous		Telephone Service			5.20
Total.....					\$242.25

G

CONCLUSIONS AS TO EXPENDITURES
 ENUMERATED IN FOREGOING SUB-
 DIVISIONS A, B, C, D, E AND F.

The foregoing payments for Hornada's salary, provisions and transportation, also for repairs, and other

miscellaneous expenses, constitute and are all the payments proven to have been made by Defendant in the pumping of the wells on this property, and in the marketing of the oil extracted and produced therefrom.

As it appears, however, from the Interlocutory Decree that the Defendant was a wilfull trespasser on the property, it seems from the authorities cited in Complainant's Brief, that Defendant is not entitled to be reimbursed by Complainant for these expenditures or for any of them. The same, therefore, should not be allowed as credits to Defendant.

VII.

"BACK SALARY" PAYMENTS

In Schedule "D" of the "Statement of Account", Defendant sets up certain payments to Clampitt, Mills and Hornada respectively, which are stated to be for "Back Salary". Defendant claims to have made such payments as compensation for the services of Clampitt as President and Manager of the Defendant Company; of Mills as its Secretary and Treasurer; and of Hornada in the operation of the real property involved in this suit. Such payments were made as follows:

CLAMPITT

Aug. 15, 1918.....	\$652.00
Oct. 15, 1918.....	244.50

Total	<hr/>	\$ 896.50
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MILLS

June 27, 1918.....	100.00	
Aug. 15, "	504.00	
Oct. 15, "	226.50	
		<hr/>
Total		\$830.50

HORNADA

Aug. 15, 1918.....	88.00	
Oct. 15, "	33.00	
		<hr/>
Total		\$121.00
		<hr/>
Aggregate Total		\$1848.00

If these payments were paid to these three respective officers of the Defendant Company as "Salary", then credit or allowance to Defendant for such payments would be in the nature of compensation to Defendant for its management and operation of this real property. Such payments, it seems, even under such a theory, are not allowable to Defendant on this accounting.

However, from an inspection of Defendant's Records, Minutes, and Accounts, it appears that such payments partake rather of the nature of dividends, under the name of salary; that is, dividends paid to these respective officers on their respective holdings of stock of the Defendant Company. The Brief filed by the Complainant has convinced the Special Master that such is the nature of the "Back Salary" items sought to be charged.

Defendant should not, therefore, be reimbursed or allowed credit for any of these payments.

VIII.

IMPROVEMENTS ON THE REALTY

A

RESTORING OF WELLS NOS. 3 AND 4

The fire, which burned over this property on October 4, 1917, totally destroyed the derricks, the rig, and practically all structures above the ground at wells Numbers 3 and 4; and also more or less seriously injured the pumping machinery and equipment then in use in connection therewith.

Defendant subsequently erected entirely new derricks in the places of the destroyed ones; and also replaced certain of the pumping machinery and equipment which had been either totally destroyed or rendered unserviceable. In so doing, Defendant incurred certain expenses for labor, materials and equipment, the payments for which are set forth in the "Statement of Account" as follows:

SCHEDULE "C"

Kerckhoff Cuzner Lumber Co.	\$ 64.00
Oil Well Supply Co.	81.73
" " " "	134.07
" " " "	1.76
" " " "	8.64
Haywood Lumber Co.	292.70
" " "	15.92
Total	<hr/> \$598.82

SCHEDULE "D"

Dec. 26, 1917	Hodel	\$101.25	
Nov. 17, "	Rehart	81.00	
Dec. 26, "	Cole	5.00	
" " "	Casner	6.50	
Jan. 21, 1918	Andrew	30.00	
Feb. 19, "	Cole	10.50	
Mar. 15, "	Williams	285.00	
Mar. 15, "	E. A. Clampitt	10.32	
Jun. 27, "	L. A. Clampitt	150.00	
Total		<u>\$679.57</u>	
Aggregate Total			\$1278.39

The erection of these new derricks and this replacement of the pumping machinery and equipment, were not, in any legal sense, "necessary" repairs on this property; nor were they essential or necessary to its preservation. On the contrary, they were "improvements" thereon, voluntarily and unnecessarily made by Defendant.

Defendant's expenditures for these "improvements" are not therefore allowable; and Defendant should not be given credit therefor.

B.

WELLS NUMBERS 1 AND 5

Well Number 1 has not been pumped since about the year 1912. The derrick at this well was totally destroyed by the fire of October 4, 1917. In December, 1919, Defendant erected an entirely new derrick to

replace the one which had been thus destroyed, preparatory to resuming pumping at that well.

About November, 1919, Defendant also located a new and additional well on this property, which in the course of these proceedings has been designated as Well Number 5. Defendant had the site of this location leveled, and also erected a derrick and drilling rig thereon, preparatory to the actual work of drilling such well.

The expenditures for both of these derricks and this rig, appear in the "Statement of Account". These expenses are not so separated as to make it possible to determine just what was expended at either one of these wells, by itself. The lumber and other materials were bought at the same time, for both; and likewise the labor went from one to the other. The payments made for the two wells together, are as follows:

SCHEDULE "C"

Curran Bros.	\$703.32
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SCHEDULE "D"

Nov. 8, 1919	Basolo	\$ 55.52
Dec. 19, "	Udall	42.00
Unpaid	Williams	232.00
"	Jonson	159.50
		<hr/>
	Total	\$489.02

Aggregate Total - -	\$1192.34
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This work was not, in any legal sense, "repairs" on this property; nor was it essential or necessary to

its preservation. The erection of this new derrick at Well Number 1, and this preparatory work for the drilling of Well Number 5, were all "improvements" on the property, voluntarily and unnecessarily undertaken and made by Defendant.

C

NEW WATER SYSTEM

In August, 1919, Defendant installed a completely new water system on the property. At that time, water was used and needed for the circulating tank in connection with the gas pumping engine, and also for cooking, drinking, and the other usual camp necessities. Defendant incurred and paid the following expenses in installing this system, as appears in the "Statement of Account":

SCHEDULE "C"

Aug. 31, 1919	Smith Booth Usher Co.	\$60.00
" 6, "	E. A. Clampitt Co.	29.65
		<hr/>
Total		\$89.65

SCHEDULE "D"

Sept. 19, 1919	Casner	\$ 4.50
		<hr/>
Aggregate Total		\$94.15

These payments cover only the materials and equipment which were used in this work. Neither the "Statement of Account", nor the proof in these proceedings, identify the payments which were made for the labor in installing this water system. The Special

Master is, therefore, unable to make any statement or finding as to the cost of such labor.

This new water system was not a "repair", necessary or otherwise. Nor was it essential or necessary to the preservation or operation of this property; nor to the producing and marketing of the oil extracted by Defendant therefrom. It was, however, essentially necessary to furnish the additional water which would be needed in the drilling of the new Well Number 5. This water system was an entirely new, substantial and permanent "improvement" on the property, voluntarily and unnecessarily made by Defendant.

D

NEW ROAD

When Defendant took possession on March 3, 1917, there was a private road through the property, which had been in existence and use for many years, and which had accommodated the ordinary and necessary requirements. During each of the annually recurring rainy seasons, this road became more or less washed; but was thereupon cleaned up, repaired where necessary, and restored to normal condition, in a few days, and at a comparatively small cost.

In 1919, Defendant not only completely made over the bed of a portion of this road, but also considerably changed the general direction of the remainder, so that the road might be nearer and more convenient for the drilling of the new well Number 5. By this change, Defendant constructed and made entirely new

road of some 1000 feet. This required some six months of labor. The various expenditures made by Defendant in this work, as they appear in the "Statement of Account", follow:

SCHEDULE "C"

June 12, 1919	Harper & Reynolds	\$32.45
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SCHEDULE "D"

Apr. 19, 1919	McDonald	\$42.00
May 7, "	" "	\$90.00
June 12, "	" "	93.00
July 3, "	" "	90.00
" 28, "	" "	72.00
Aug. 6, "	Casner	7.00
June 12, "	Lile Ingalls	15.00
" 16, "	" "	22.50
Oct. 20, "	Ross	58.50
Nov. 3, "	Scott	112.50
" 28, "	" "	63.00
" 3, "	Rassmusson	56.25
Unpaid	L. A. Clampitt	60.00
Total		<hr/> \$781.75
Aggregate Total		\$814.20

The road as it existed at that time, subject to the usual and annual repairs, practically met all the requirements of the property. This substantial improvement or addition consequently was not a necessary repair to this road; nor was it essential or necessary to the preservation of the property itself, nor to the

producing and marketing of the oil extracted therefrom by Defendant. This work constituted a substantial and permanent "improvement" on the property, voluntarily and unnecessarily made by Defendant.

E

ADDITIONAL GAUGING TANK

Defendant, in 1919, placed a so called "Gauging Tank" on the property. This was an addition to the tanks already then on the property, and then in use for the temporary storage of the crude petroleum there being produced by Defendant. The cost of the purchase of this tank, is not traceable either in the "Statement of Account" or in the proofs in these proceedings. The "Statement of Account" shows, however, the following expenditures for setting it up on the property.

SCHEDULE "D"

Nov. 3, 1919	Andre	\$39.00
Unpaid	L. A. Clampitt	36.00
		<hr/>
Total		75.00

This tank was not a repair, necessary or otherwise, to this property; nor was it essential or necessary to the preservation or operation of the property itself, nor to the producing and marketing of the oil extracted therefrom. This tank was an "Improvement" on the property, voluntarily and unnecessarily made by Defendant.

F

CONCLUSIONS FROM FOREGOING FINDINGS

The installing of the new water system, the reconstruction of the old road with its new addition, the placing of the additional gauging tank on the property, the erection of the new derrick at Well Number 1, and the drilling of Well Number 5, were each a part of and all formed a general plan of Defendant to improve and develop this property. Without this new road for the hauling of the necessarily heavy drilling equipment, and without this increased water supply, the drilling of this new well would not have been possible, or at least would have been much more difficult. All such works were "improvements" on this property. None of these improvements were essential or necessary to the preservation or operation of this property, nor to the producing or marketing of the oil which Defendant has extracted and sold therefrom. And these improvements were all voluntarily and unnecessarily made by Defendant.

Defendant should not be reimbursed for any of the expenditures which it has made in connection with any of these improvements, nor allowed any credit therefor on this accounting.

IX

CONCEDED ERRORS

in the

"STATEMENT OF ACCOUNT"

On the hearing of these proceedings, Defendant conceded that the following items had been improperly

inserted in the "Statement of Account"; and that they should not be considered on this accounting.

March 2, 1920	P. A. Assonty	\$10.00
December 20, 1917	T. M. Hornada	59.40
(This is part of \$109.40 as entered)		

Total	\$69.40
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This total amount should be disallowed to Defendant.

X

UNEXPLAINED ITEMS OF ACCOUNT

The following items of payment which are set forth in the "Statement of Account", are unsupported by any proof as to the purposes for which they were made sufficient to support their allowance as credits to Defendant:

SCHEDULE "D"

Mar. 15, 1918	Cole	\$ 6.00
Dec. 20, 1917	Mills	353.61
Mar. 15, 1918	"	2.00
Sept. 19, 1919	Clampitt	81.80
Feb. 10, 1920	"	74.45
July 18, 1917	C. E. Ingalls	4.50
Mar. 15, 1918	"	3.00
May 25, 1917	Labonge	8.75

Total	\$534.11
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These several items, therefore, should not be allowed to Defendant, as credits on this accounting.

XI.

THE PROPERTY INVENTORIED IN SCHEDULE
"E" OF THE "STATEMENT
OF ACCOUNT"

Defendant claims to be the owner of all the property particularly itemized in Schedule "E" of the "Statement of Account"; and, as such owner, also claims to be entitled on this accounting, to a credit for the use thereof in its operation of the real property involved in this suit, equal to 7% per annum since March 3, 1917, on its estimated valuation of \$17,-856.50. ("Statement of Account", page 2)

In general, this property comprises all the buildings, structures, machinery and equipment which were on the real property when Defendant took possession thereof on March 3, 1917, or which were then imbedded or sunk therein. This Schedule "E" also includes, however, certain replacements of property which were destroyed by the fire of October 4, 1917. Defendant has also presented in its "Statement of Account", its various expenditures for such replacements; and has also sought credit for the same on this accounting.

Defendant's claim of ownership, is based on a certain "Certificate of Sale" (Ex. "B"), from the Sheriff of Ventura County, State of California.

On February 17, 1917, the Sheriff of Ventura County, State of California, acting under a certain Writ of Execution on the same judgment which is particularly found and adjudicated in the Interlocutory

Decree in this suit, undertook to sell the "personal property" of the judgment debtor, Pacific Crude Oil Company. The purchaser at such sale was this Defendant, Big Sespe Oil Company: and it then and there received the said Sheriff's "Certificate of Sale" (Ex. "B"). By said Certificate, the said Sheriff certifies that he has thus sold only "All the right, title and interest" of the said Pacific Crude Oil Company, of, in and to the certain property in the said Certificate also particularly mentioned, and which is practically the same property as is inventoried in Schedule "E" of the "Statement of Account", for the sum of \$300.

At the time of the entry of the said judgment, and also at the time of the said sale thereunder, the legal title to all the aforementioned property was vested in and was held by "William H. Cochran as Trustee for Pacific Crude Oil Company", by virtue of two certain deeds, dated respectively March 30, 1914. And further, the said judgment debtor, Pacific Crude Oil Company, then neither had nor possessed any ownership, estate or interest, in the said property nor any thereof, nor any right to its possession; but had and possessed solely the right to enforce the trust in connection therewith, against the said Trustee.

Moreover, all the said property on the said 17th day of February, 1917, was, and still is, "affixed" to the mining lands involved in this suit, within the intent, meaning and purposes of the Statutes of the State of California relative thereto. Consequently, said property was not then "personal property"; nor was

it then subject to sale as such, under the said execution.

Defendant is not the owner of said property as claimed. Consequently, no allowance should be made to Defendant, for its use in connection with the operation of this realty since March 3, 1917.

XII

PROVISIONS, LIVERY AND TRANSFER CHARGES

Defendant has made various payments for provisions, for livery services, and for the hauling of materials, equipment and supplies, all of which are set forth in Schedule "D" of the "Statement of Account".

Expenditures for provisions are covered by the payments to "Ventura Co-Op Store", "Lee A. Phillips", and also by certain of Hornada's monthly statements. They aggregate \$931.64. These payments also include small tools and hardware.

Payments for livery services and for hauling are covered by the items of payment to "Star Stables", and "Moores Transfer"; and some also appear in certain of Hornada's monthly statements. These all aggregate \$138.31.

The charges for provisions and for livery service, include not only those furnished to Hornada, but also to all the other employees or laborers employed by Defendant, on or about this property, in various but quite generally unidentified work, including, however, the extensive permanent improvements made thereon.

The charges for hauling were for the hauling of supplies, materials and equipment used in various unidentified work on the property, including, however, the extensive permanent improvements made thereon.

The statements and receipts for all these payments are not itemized; nor has any proof been offered which would serve to identify any of these payments with any particular class of laborers or of work; or on which any determination could be made as to just what was hauled or whether it was for necessary repairs, or in connection with the improvements, or even whether necessary to the production and marketing of the oil extracted from the property. It is, therefore, impossible to make any specific further finding as to any of these items of payment.

Complainant should not be required to reimburse Defendant for any of these expenditures; nor should Defendant be allowed credit for said payments, or any of them.

XIII.

Since the commencement of this suit on July 2, 1919, it does not seem to the Special Master that the Defendant has diligently or providently managed or operated the real property in this suit, the present value of which consists chiefly in oil producing wells. Judging from comparative results before and after the institution of this suit, it has not, since the institution thereof, pumped the wells thereon so as to produce all the crude petroleum that otherwise would have been produced.

Since the institution of this suit, it appears that the monthly or average yield from the wells had diminished materially by reason of the failure on the part of the Defendant to continue pumping them with the former persistence, diligence and energy, with the result that the accustomed income, rents and profits have been materially reduced. In other words, since the commencement of this suit on July 2, 1919, Defendant has not managed and operated this real property as a provident owner could and would have managed and operated it.

This reduction in the gross income from the property, accompanied as shown by increased cost, by added expenditures for permanent improvements, tended, according to Defendant's theory of the outlays for which it should be allowed upon this accounting, wrongfully to increase the amount of money which would be required of the Complainant to effect the redemption to which, under the Interlocutory Decree he is entitled.

However, as in the view of the Special Master the Defendant should not be credited with this additional expense and outlay, nor Complainant charged therewith, it does not seem pertinent to consider any offset in the way of loss which the Complainant may have suffered by the omission on the part of the Defendant to keep the property up to its natural and normal producing capacity. Such an offset verges on the remote and speculative, although it might be estimated on the principle of averages of former production.

XIV
SUMMARY STATEMENT

Defendant should be credited as of March 3, 1917, with the amount of the purchase money paid at the execution sale on that day, viz, \$17,340.50.

Defendant should also be credited with the various amounts paid for taxes on the real property, as follows, viz:

March	14, 1917	\$157.80
"	12, "	127.14
April	17, 1918	138.18
July	15, "	15.33
Nov.	23, "	151.20
"	10, 1919	156.66

These payments for taxes should be respectively credited to Defendant as and of the days of the dates they were respectively made, as above set forth.

Defendant should be charged with the various amounts of money collected and received by it, from the sale of the crude petroleum which it has extracted and sold from the real property involved in this suit; such amounts being as hereinbefore found and stated. And such charges should be respectively made as and of the days of the dates when such monies were respectively collected and received by Defendant, as also hereinbefore found and stated.

Defendant should also be charged with interest at the rate of 7% per annum on these proceeds from the sale of oil, from the time of their several respective payments, up to and including the day of the entry of the Final Decree herein.

From March 3, 1917, and monthly thereafter up to and including the 1st day of April, 1918, Defendant should be credited with interest, at the rate of 1% per month, on any balance that may be found then due to him under this accounting. After April 1, 1918, no interest should be allowed to Defendant.

In finally determining and stating the amount to be paid on this accounting, rests should be made at the expiration of each and every month after March 3, 1917; and the interest and balances then ascertained and fixed. For example, on April 20, 1917; that is, shortly after its entry upon the property, the Defendant received its first payment arising from the sale of oil extracted from the property, viz, \$329.09. For the purpose of this accounting this is to be deemed money of the judgment debtor paid into the hands of the purchaser, and should be immediately applied as in payment on the principal sum of \$17,340.50 paid by the Defendant as purchaser of the execution sale, after adding interest at the rate of 1% per month. In other words, interest at 1% per month should be computed only upon the amount or balance of the purchase money remaining unpaid after such amount or balance has been reduced by deduction therefrom of the monies received by Defendant from month to month from the oil runs. This method will proceed practically by monthly rests in the calculation of interest.

It is apparent, as a result of this accounting as above set forth, under the rule of excluding credits for expenditures made by the Defendant, that, instead of

a sum of money payable by the Complainant to the Defendant to effectuate the redemption, there will be payable from the Defendant to the Complainant a sum consisting of a net surplus from the operation of these oil lands, which sum, although it cannot be accurately estimated until the time of the presentation and consideration of this Report by the District Court, nevertheless, will amount, roughly to several thousand dollars. Whether or not such sum is recoverable through execution or process issued upon a decree which may be rendered in this suit, or whether a separate and independent action will be required, is a question not within the province of the Special Master to consider or report upon. It seems, however, that Rule #8 of the "Rules of Practice for the Courts of Equity of the United States", relating to the enforcement of Final Decrees, is applicable.

The Theory of the Defendant of the nature of this accounting, and of the rule or principle under which it is obligated and liable for its operation of these oil lands as urged upon the hearing and as set forth in substance on page 2 of its "Statement of Account", is that the owner of realty upon which operations for the production of oil are conducted is, under a custom established and followed in the Mining District in which these oil lands are situated, paid a one-sixth royalty of the gross production after deducting therefrom the value of all gas and oil used in the operation of these premises, as a royalty to be paid by it as the rental value for its use and occupation.

The principle or doctrine so advanced seems to be one which might apply as between landlord and tenant, if such a custom or practice were established. The Special Master does not think that the evidence shows such a custom; but even if such custom in the District were proven by the evidence, nevertheless such custom cannot be deemed applicable or pertinent to the relations existing between the parties to this suit. There was no lease here expressed or implied, nor did the relation of landlord and tenant exist as between the parties. The Special Master has therefore not deemed it proper to submit a report founded upon the theory and custom urged in behalf of the Defendant.

A.

In order to assist the District Court in arriving at, and fixing, the Special Master's fee upon this Reference, annexed to this report is a statement of the time given by the Special Master to the respective hearings, which statement, however, does not include the time devoted to the preparation and formulation of the Report itself, or of the Opinion accompanying the same.

Also annexed to this report is a statement of monies deposited by the respective parties with the Special Master to meet the expenses of the Reference, particularly for Transcripts of the proceedings; but which statement does not include the various per diem fees paid daily by the respective parties to the Reporters, an account or record of which the Special Master did

not keep. Such statement also shows the amount of money expended from such deposits and the balance remaining in the hands of the Special Master.

As appears from said statement, the Reporter, Paul Lehnhardt, has received \$69.80, which is in payment at the rate of 10 cents per folio for a certain transcript furnished by him for complainant. Mr. Lehnhardt has also furnished another transcript for Defendant, for which he has not been paid, consisting of 250 folios (as estimated by the Special Master,) for which, at the rate of 10 cents per folio, he should be paid the sum of \$25.00.

Mr. Lehnhardt, however, asserts that he is entitled to payment at the rate of 20 cents per folio for both transcripts, which rate the Special Master has not felt that he was able to approve or allow. The circumstances relating to this claim of Mr. Lehnhardt are set forth in a certificate and also in an Additional or Supplementary Certificate heretofore transmitted by the Special Master to the District Court.

In other words, Mr. Lehnhardt, at the rate of 10 cents per folio, is entitled to an additional sum of \$25.00 as above stated. However, if he is to be paid at the rate of 20 cents per folio, he will receive an additional \$69.80 on the first Transcript and the sum of \$50.00, at the rate of 20 cents per folio, on the last Transcript filed by him, making a total of \$119.80 to be paid by such party as the District Court shall direct, and taxed accordingly. The other reporters in the case, namely, E. E. Cripps, Arthur J. Hughes and

Eliza P. Houghton, have been paid and have accepted in full for their services, payment at the rate of 10 cents per folio for the original transcript. Mr. Cripps, however, was paid for the Transcript furnished by him, directly by the Complainant, Cochran.

The Special Master transmits and returns with this Report the following papers and documents:

1. Interlocutory Decree
2. Oath of Force Parker, Master Pro Hac Vice
3. Notice and Order by Special Master on Defendant Corporation for Accounting.
4. Order fixing date for hearing and Accounting before Special Master and thirteen continuances.
5. Statement of Account under Equity Rule No. 63 and copy thereof.
6. Letter from Theodore Martin dated May 8th, 1920 enclosing copy of Reporter's Transcript of Oral Decision of Judge Trippet.
7. Special Master's notes.
8. Letter from Cates and Robinson dated May 5th, 1920 together with statements of account therein enumerated.
9. Complainant's Exhibits Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9.
10. Defendant's Exhibits Nos. A. B. C. D. and E.
11. Complainant's Brief with six accompanying schedules and summary thereof.
12. Reporter's Transcripts of testimony taken May 17th, 1920; May 19th, 1920, June 9th, 1920. (Original and Copy), June 14th, 1920, and June 25th, 1920.

13. Two check books of the Big Sespe Oil Company.
14. Book containing copy of the Articles of Incorporation, by-laws and minutes of the Big Sespe Oil Company.

All of which is respectfully submitted.

Dated: Los Angeles, California, August 30th, 1920.

FORCE PARKER

Special Master.

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

WILLIAM H. COCHRAN, a)	
citizen of the State of New York,	)	No. E 26
)	
Complainant,	)	IN EQUITY
)	
vs.	)	STATEMENT
	)	OF ACCOUNT
BIG SESPE OIL COMPANY, a	)	OF MONIES
corporation, formed, organized	)	RECEIVED
and existing under and by virtue	)	FROM
of the laws of the State of Cali-	)	PARTIES
fornia and a citizen and resident	)	AND
of the said State; and E. G. Mc-	)	DISBURSED
MARTIN, Sheriff of the County	)	BY SPECIAL
of Ventura, State of California,	)	MASTER
and also a citizen and resident of)	
the said State of California,)	
)	
Defendants.)	

RECEIVED:

June 2nd, 1920, of Theodore Martin, Attor-
ney for Complainant \$150.00

June 9th, 1920, of Theodore Martin, attorney for Complainant, 100.00

Total - - 250.00

June 9th, 1920, of Cates & Robinson, Attorneys for Defendants, \$150.00

DISBURSED:

	For	Complainant	Defendants
1920			
June 9th,	Paul Lehnhardt, Reporting	\$69.80	
23rd,	Arthur J. Hughes “		
	148 fols @ 10¢	14.80	
	166 fols @ 10¢		16.60
July 1st,	Eliza P. Houghton, Reporting		
	99 fols @ 10¢	9.90	
6th,	Arthur J. Hughes, Reporting		
	32¼ fols @ 10¢	3.25	
	17½ fols @ 10¢		1.75
	Total	\$97.75	\$18.35
	Received of Complainant		\$250.00
	Disbursed for Complainant		97.75
	Balance		\$152.25
	Received of Defendants		\$150.00
	Disbursed for Defendants		18.35
	Balance		\$131.65

IN THE DISTRICT COURT OF THE UNITED
STATES FOR THE SOUTHERN
DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

WILLIAM H. COCHRAN, a
citizen of the State of New York,)

Complainant,)

vs.)

BIG SESPE OIL COMPANY, a
corporation formed, organized) RECORD OF
and existing under and by virtue) HEARINGS
of the laws of the State of Cali-) BEFORE
fornia and a citizen and resident) FORCE
of the said State; and E. G. Mc-) PARKER,
MARTIN, Sheriff of the County) SPECIAL
of Ventura, State of California,) MASTER.
and also a citizen and resident of
the said State of California.)

Defendants.)

1920.		A. M.	P. M.
May 4th	Proceeded		2 to 3:30
" 11th	Did not Proceed		
" 17th	Proceeded	10:30 to 12	3 to 5:15
" 19th	"	10 to 12	2 to 5:30
" 20th	"	10 to 12	
" 21st	"		2:30 to 5
" 27th	Did not Proceed		
Jun 2nd	Proceeded	10 to 12	2 to 4:10
" 9th	"	10 to 12:15	2 to 5
" 14th	"		2 to 5

" 15th	"	10:30 to 12	2 to 5:10
" 16th	"		2 to 4:10
" 24th	Did not Proceed		
" 25th	Proceeded		2 to 3:40

Endorsed: Filed Sep. 7, 1920. Chas. N. Williams,
Clerk; By P. W. Kerr, Deputy Clerk.

[TITLE AS BEFORE.]

Complainant's Exceptions to Report of Special Master.

The Complainant, William H. Cochran, hereby excepts in the following particulars to the Report of the Special Master, as filed herein on the First day of September, 1920.

FIRST: In that the Special Master finds (Finding XIII) that "It does not seem pertinent to consider any offset in the way of loss which the Complainant may have suffered by the omission on the part of the Defendant to keep the property up to its natural and normal producing capacity."

SECOND: In that the Special Master does not find that Complainant is entitled to receive credit for, and should be allowed, or be entitled to recover in this suit, the loss which the Complainant may have and actually has suffered by the omission on the part of the Defendant to keep the property up to its natural and normal producing capacity.

THIRD: In that the Special Master does not fix, report and find the amount of the loss which the Complainant may have and actually has suffered by the

omission on the part of the Defendant to keep the property up to its natural and normal producing capacity.

Dated: September 20, 1920.

THEODORE MARTIN,

Solicitor for Complainant.

Endorsed: Received copy of the within Exceptions this 20th day of Sept., 1920. Gates & Robinson, Solicitors for Deft.

Filed Sep. 18, 1920. Chas. N. Williams, Clerk; by P. W. Kerr, Deputy Clerk.

[TITLE AS BEFORE.]

Defendants' Exceptions to Report of Special Master.

The defendant excepts to the report of Force Parker, Esquire, the Special Master, filed in this cause on the 7th day of September, 1920, and for cause of exception shows:

FIRST: That the Master has in said report, stated and certified that the moneys collected and received by defendant from its sales of crude petroleum constitute rents or profits, which said defendant has received from the said property since March 3, 1917, and as such rents or profits are credited upon the money required to be paid by complainant to make and effect a redemption adjudged to him by the interlocutory decree herein, whereas the Master ought to have found that the said moneys so collected and received were merely the basis of computing the rents and profits

from the real property involved, and from them should be deducted the expenses and allowances for operating said property.

SECOND: The Master has in said report stated and certified that taxes paid to John P. Carter, the United States Collector of Internal Revenue, was not shown by proof to have been made, or were made in payment of taxes on account of defendant's own business and affairs, whereas the Master ought to have found that said payments were made upon the gross receipts from sale of oil produced from the property in question and proof admitted to that effect (see testimony of T. M. Hornada on June 15, 1920, Transcript page 58.)

THIRD: That the Master has in his said report stated and certified that the defendant should not be allowed credit for payments of bond premiums, whereas the Master ought to have found that the defendant should be allowed credit for the same.

FOURTH: The Master in his said report stated and certified that one Hornada has regularly received and accepted payments of One hundred (\$100.00) dollars per month as and in full payment and satisfaction of his services to defendant during the period since March 3, 1917, whereas the Master ought to have found that the said Hornada was to receive an additional Sixty-five (\$65.00) dollars per month from the summer of 1918, (Testimony of T. M. Hornada May 17, 1920, pages 17 and 18, Transcript of E. E. Cripps, Reporter).

FIFTH: That the Master has in said report stated and certified that the unpaid item of Six hundred (\$600.00) dollars should not be allowed as a credit to defendant for unpaid salary due to said Hornada for back pay, because the evidence fails legally to show an agreement to pay the same to him, whereas the Master ought to have found that the defendant should receive credit for said amount and the evidence shows such an agreement (Testimony of T. M. Hornada, May 17, 1920, pages 17 and 18, Transcript of E. E. Cripps, Reporter).

SIXTH: That the Master has in said report stated and certified that the defendant has not explained or classified items for transportation of Hornada and other employees and for hauling supplies, materials, etc., whereas the Master ought to have found that said items were severally and individually shown to be properly and necessarily expended in operating the real property involved in this action. (Testimony of T. M. Hornada May 17, 1920, pages 20 to 25, Transcript by E. E. Cripps, Reporter, and May 19, 1920, pages 1 to 274, Transcript by Lenhardt, Reporter.)

SEVENTH: That the Master has in said report stated and certified that the defendant was a willful trespasser on the property and is not entitled to be reimbursed by complainant for expenditures for repairs and operation of the property, whereas the Master should have found that such expenditures should be deducted as proper charges and expenses in the operation of said property by the defendant.

EIGHTH: That the Master has in said report stated and certified that the sum of Eight hundred ninety-six and 50/100 (\$896.50) dollars paid to one Clampitt as President and Manager of the defendant company should not be allowed as a credit, whereas the Master ought to have found that said Clampitt was the General Manager in charge of operations of the property in question, (Testimony of T. M. Hornada, May 17, 1920, pages 8 to 16, Transcript by E. E. Cripps, Reporter.) and that his services were worth Two hundred (\$200.00) dollars per month, (Testimony of E. R. Snyder, Transcript, pages 380 to 383 and stipulation that B. M. Howe would testify to same effect, Transcript pages 388 to 390, inclusive.)

NINTH: That the Master has in said report stated and certified that the erection of new derricks and replacement of pumping machinery and equipment were not necessary repairs, but were improvements voluntarily and unnecessarily made by defendant, and for which defendant should not be given credit, whereas the Master ought to have found that the improvements on the realty set forth in paragraph VIII, Subdivisions A and B on pages 15, 16 and 17 of said report, and the amount specified therefor were necessary expenditures for which credit should be given the defendant.

TENTH: That the Master has in said report stated and certified that the new water system was not essential to the operation of said property, whereas the Master ought to have found that the expense involved

in putting in this water system was a necessary expense, for which defendant should receive credit.

ELEVENTH: That the Master has in said report stated and certified that the road described in Subdivision D of Paragraph VIII of said report on pages 18 and 19 was not a necessary repair to the road, nor essential or necessary to the preservation to the property itself, nor to the producing or marketing of oil extracted therefrom by the defendant, whereas the Master ought to have found that the work upon said road was necessary to the preservation of said property and of producing and marketing of oil extracted therefrom by the defendant (see testimony of T. M. Hornada June 15, 1920, at pages 16 and 17 of Transcript of his said testimony).

TWELFTH: That the Master has in said report stated and certified that the installing of new water system, the reconstruction of the old road, the placing of additional gauging tank on the property, the erection of new derrick at well No. 1 and the drilling of well No. 5 were not necessary to the preservation of the property or the producing or marketing of oil, and the expenses of which defendant should receive no credit, whereas as appears by said report itself in the description of details therein, all of said materials and things were necessary and defendant should receive credit for the expenses thereof.

THIRTEENTH: That the Master has in said report stated and certified that the defendant is not the owner of the personal property upon the real estate

involved in this action, and should receive no credit for its use in connection with operation of said realty since March 3, 1917, whereas the Master ought to have found that the defendant was and is the owner of said personalty, that the using of said personalty entered into the production of the profit from said realty, and defendant should receive credit therefor.

FOURTEENTH: That the Master has in said report stated and certified that the defendant should be charged with interest at the rate of seven (7%) per cent per annum on proceeds from the sale of oil from the time of their several respective payments, whereas the Master ought to have found that the defendant is not to be charged with interest upon any of said items of receipts, or any items of receipts whatever.

FIFTEENTH: That the Master has in said report stated and certified that the defendant should not be credited with any interest after April 1, 1918, upon the judgment on account of which redemption is to be made, whereas the Master ought to have found that the defendant is entitled to be credited with one (1%) per cent per month upon the full amount of said judgment until paid.

SIXTEENTH: That the Master has in said report stated and certified that monthly rests charging interest upon receipts should be made in taking this accounting, whereas the Master ought to have found that no such rests should be made and no interest charged.

SEVENTEENTH: That the Master has in said report stated and certified that the evidence does not

show a custom in the district where the real property in question is situated of fixing the rental value of oil rent at one-sixth ($1/6$) royalty of the gross production, or any other rate of royalty, whereas the Master ought to have found that such custom existed in said district and that the only proper charge against the defendant to be credited upon the redemption is not to exceed one-sixth ($1/6$) royalty. (Testimony of E. R. Snyder, June 9, 1920, pages 333 to 375, Transcript and stipulation that B. M. Howe would testify as Snyder did, pages 388 to 390 Transcript.)

EIGHTEENTH: That the Master has in said report stated and certified that the said accounting is made upon the basis and it is apparent that the whole of said account is made upon the basis and assumption that the defendant in the occupation of the real property involved herein, bore to the complainant the relation of a trespasser, whereas the Master ought to have found that the defendant for the purpose of this accounting should not be treated as a trespasser, but should account only for the rents and profits attributable to or actually received from the use of the realty and the whole of said accounting should be resubmitted to and revised by said Master upon a theory involving no question of trespasser.

Respectfully Submitted,

CATES & ROBINSON,

Solicitors for Defendants.

DATED September 27, 1920.

Endorsed: Filed Sep. 27, 1920. Chas. N. Williams, Clerk; by P. W. Kerr, Deputy Clerk.

[TITLE AS BEFORE.]

**Supplementary Statement of Receipts and
Disbursements.**

STATE OF CALIFORNIA,)
) SS.
COUNTY OF LOS ANGELES.)

T. M. HORNADA being first duly sworn says:
That at all the times mentioned in the annexed statement of receipts and disbursements to-wit, between the first day of April, 1920, and the present date, he has been and is now in the employ of the Big Sespe Oil Company as Superintendent of Production, and in such employment has received for said company all the returns of money for oil taken from the property of said company, being the property in issue in the above entitled action, and has disbursed the moneys paid out in operating said property during said period of time; that the annexed statement is a true and correct statement of all the moneys received by said Big Sespe Oil Company from the sale of oil from said property, and the annexed statement of disbursements is a true statement of moneys paid out for and on account of said property in the operation thereof during said period of time, and all of said sums of money were paid out on the dates set opposite them for said purposes, and as shown in the vouchers attached hereto.

T. M. HORNADA.

Subscribed and sworn to before me this 25th day
of October, 1920.

HAZEL D. CRABB,
*NOTARY PUBLIC in and for the County of Los
Angeles, State of California.*
(NOTARIAL SEAL)

Statement of Receipts and Disbursements of Big Sespe
Oil Company Subsequent to Statement of Account
Submitted to the Special Master under
date of May 4, 1920.

1920	Receipts		Voucher No.
Apr. 15	Turner Oil Co.—Mch. oil run	652.38	
May	“ Apr. oil run	290.27	
June	“ May oil run	441.79	RS1
July	“ June oil run	154.52	RS2
Aug.	“ July oil run	147.84	RS3
Sept.	“ Aug. oil run	506.63	RS4
Oct.	“ Sept. oil run	328.53	RS5
	Total	<u>2521.96</u>	

	Disbursements		Voucher No.
Apr. 15	T. M. Hornada	112.75	
May 15	“	111.14	
June 3	“	114.95	DS1
	4 L. A. Clampitt, money ad- vanced to Fred Jenson for labor.	100.00	DS2
	24 L. W. Williams, labor	232.00	
	“ for Fred Jen- son, labor	59.50	
July 6	T. M. Hornada	111.25	DS3
Aug. 2	“	146.83	DS4
	12 F. W. Richardson, St. Treasr.	22.86	DS5
Sept. 2	T. M. Hornada	170.00	DS6
Oct. 1	“	184.50	DS7
	Total	<u>1365.78</u>	

Endorsed: Filed Oct. 25, 1920. Chas. N. Williams,
Clerk; Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Notice of Motion to Intervene.

SIRS:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that, on the 22d day of November, 1920, at ten o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, and on the annexed Petition of William H. Cochran as Trustee for Pacific Crude Oil Company, verified the 15th day of November, 1920, the said William H. Cochran as Trustee for Pacific Crude Oil Company will move this Honorable Court, before Hon. Oscar A. Trippet, at the Court rooms of said Court, in the Federal Building, in the City of Los Angeles, State of California, for leave to intervene in this suit, and that he be made a party complainant hereto; and also for such other and further relief in the premises, as may be just and equitable.

Dated this 15th day of November, 1920.

THEODORE MARTIN,

Solicitor for Petitioner.

To the above named Defendants, and also to Messrs. Cates & Robinson, Solicitors for said defendants.

IN THE DISTRICT COURT OF THE UNITED
STATES, FOR THE SOUTHERN DISTRICT
OF CALIFORNIA, SOUTHERN DIVISION.

WILLIAM H. COCHRAN, a)	
citizen of the State of New)	
York,)	
COMPLAINANT,	)	IN EQUITY
VERSUS	)	NO. E 26.
BIG SESPE OIL COMPANY,)	
a corporation formed, organ-)	
ized and existing under and by)	
virtue of the laws of the State)	
of California, and a citizen and	)	PETITION TO
resident of the said State; and	)	INTERVENE
E. G. McMARTIN, Sheriff of)	
the County of Ventura, State of)	
California, and also a citizen)	
and resident of the said State)	
of California.)	
)	
DEFENDANTS.)	
)	
)	
WILLIAM H. COCHRAN,)	
AS TRUSTEE FOR PA-)	
CIFIC CRUDE OIL COM-)	
PANY, a corporation,)	
)	
INTERVENER.)	
)	

TO THE

HONORABLE JUDGES OF THE DISTRICT
COURT OF THE UNITED STATES, FOR
THE SOUTHERN DISTRICT OF CALIFOR-
NIA, SOUTHERN DIVISION.

THE PETITION OF WILLIAM H. COCHRAN, AS TRUSTEE FOR PACIFIC CRUDE OIL COMPANY, A CORPORATION, RESPECTFULLY SHOWETH:

FIRST: That the above entitled suit is a suit in equity; and was instituted and has been prosecuted in this Honorable Court, by your Petitioner individually, in his own personal right, and for his own personal use and benefit. And the Final Decree therein is now about to be made and entered.

SECOND: That this suit is primarily brought to enforce, under the Laws and Statutes of the State of California, Complainant's certain alleged and claimed redemption or right of redemption, from a sale under an execution on a judgment at law, in favor of one of the Defendants in this suit, viz: Big Sespe Oil Company, and against the Complainant's assignor, Pacific Crude Oil Company, a Delaware Corporation. By this suit, Complainant also seeks to have the defendant, Big Sespe Oil Company,—which was also the purchaser at the said execution sale—disclose and account for all the rents and profits collected and received by it, through its possession, occupation and operation of the certain oil producing lands particularly described in the Bill of Complaint, in order that the amount of such rents and profits can be credited upon the money, if any, required to be paid by Complainant to make and affect such mentioned redemption.

THIRD: That both of the above named Defendants appeared in this suit, and filed their Answer to

the Bill of Complaint herein. Said Answer, in substance, is a denial of Complainant's alleged and claimed right of redemption; and also a denial of Complainant's right to any credit upon the redemption money required to be paid by the California Statute regulating such redemptions.

FOURTH: That after the trial and hearing of this suit, an Interlocutory Decree was made and entered herein, wherein and whereby, *inter alia*, the Complainant was adjudged to be entitled to make such aforementioned redemption, and the suit was referred to a Special Master, for an accounting and disclosure by the Defendant, Big Sespe Oil Company, of such rents and profits as it has collected and received from the aforementioned property, since March 3, 1917; the said Master being also likewise directed and ordered to state a full account in the premises, upon the basis of the said Interlocutory Decree.

FIFTH: That in such proceedings before the said Special Master, the said Defendant, Big Sespe Oil Company, presented and filed its so-called "Statement of Account." After examination thereof, and after proofs and hearings relative thereto, the said Special Master duly filed his written Report as to such accounting and disclosure. And the said Report as filed, has been duly confirmed by this Honorable Court.

In and by the said confirmed Report, it is found and adjudged, *inter alia*, that the said Defendant, Big Sespe Oil Company, has collected and received certain stated profits from the aforementioned mining

lands; that such collected and received profits have fully paid and satisfied all the moneys required to be paid to the said Defendant, by Complainant, in order to make and effect the aforementioned redemption; and further that after such payment and satisfaction of the said redemption money, the said Defendant still has in its hands, a balance or surplus from the said profits, which is to be paid over to Complainant.

SIXTH: That on the hearing and argument of the said Defendant's filed Exceptions to this Report of the Special Master, it was urged and contended by Defendant's counsel, that your Petitioner as Trustee, and not individually, alone can require this accounting of profits as has been made herein; that, in any event, only the Trustee is entitled to recover the aforementioned surplus profits; and that if the said Report of the Special Master should be confirmed as filed, Defendant might be left subject to another suit or action, by the said Trustee, for the very same moneys, rents and profits.

SEVENTH: That this argument and contention of Defendant is based on the following facts, practically all of which have been proved and established in this suit;

Early in the year 1914, your Petitioner, William H. Cochran, who was then acting as the Attorney at Law for Pacific Crude Oil Company, a Delaware corporation, negotiated the purchase for his said clients, of the mining lands involved in this suit, and which are situated in Ventura County, in the State of California.

Under the Laws of the State of California, a foreign corporation is not permitted or qualified to acquire title to real property in that State, until such corporation has made the certain registration therein, as also required by the California Statutes. The necessary papers for such registration in California of the said Pacific Crude Oil Company had been signed and executed; and said papers, together with the necessary fees of the California Officials on the filing of the same, had been all delivered to the said Cochran, by his said clients, in March, 1914. Said Cochran was then about to complete and make such registration when he unexpectedly learned that there was another "Pacific Crude Oil Company," a California corporation, registered and doing business in that State, and whose stock was listed on the San Francisco, California, Stock Exchange. After some correspondence with the California Secretary of State relative to this other Company, and to this proposed registration of his client's Company, the said Cochran deemed it advisable not to complete this registration of his clients in California, even should the California Secretary of State finally decide to accept of the same, which at that time was questionable. And the said Cochran advised his clients, Pacific Crude Oil Company, to that effect. And such advice was accepted and followed.

At this last mentioned time, the aforementioned purchase of these mining lands was otherwise ready to be completed and consummated. And in order that the same should not be delayed, the said Pacific Crude Oil

Company (of Delaware) instructed and authorized the said Cochran to complete such purchase, and to take title to the property in his own name, "as trustee" for that Company; at the same time also transferring to him, the necessary purchase money.

That this Defendant, Big Sespe Oil Company, was fully informed and advised of all these facts, as and at the times hereinbefore set forth.

Acting under such aforesaid instructions and authority from his clients so to do, and using the money which they had furnished to him for that purpose, the said Cochran purchased the property above referred to, the legal title thereto being conveyed to him by the two certain Deeds dated March 30, 1914, which are in evidence in this suit, and which show such conveyance of said property to have been then made to "William H. Cochran as Trustee for Pacific Crude Oil Company," who is here your Petitioner.

Under the trust thus created, your Petitioner became the owner and holder of the legal title to this real property, in trust and for the use and benefit of the said Pacific Crude Oil Company, and subject to their demand or instructions as to the future conveyance thereof; and, in the meantime, your Petitioner was to manage and operate the said property as he deemed fit and advisable, was to collect and receive the rents and profits therefrom, and was to account for the same to the said Company, as the beneficiary or cestinque trust of the said trust.

The Defendant in this suit, Big Sespe Oil Company, having obtained a certain judgment against this Pacific

Crude Oil Company, caused a Writ of Execution to be issued thereon, to the then Sheriff of the County of Ventura, State of California, who is the other Defendant in this suit. Pursuant to such Execution, the said Sheriff, on March 3, 1917, sold at public auction, to the Big Sespe Oil Company, "all the estate, right, title and interest" of the said judgment debtor, Pacific Crude Oil Company, of, in and to the aforementioned real property. As to this, it has been adjudged in this suit, that the said Pacific Crude Oil Company had simply and solely the right to enforce the performance of the aforementioned trust in connection with the said property, against the said Trustee. This right of the said Pacific Crude Oil Company in connection with the said property, and which was thus sold at the aforementioned execution sale, was subject to redemption by the said judgment debtor, under the California Statutes relative thereto. Prior to the commencement of this suit, the said judgment debtor, Pacific Crude Oil Company, duly sold and assigned to the Complainant, individually, herein, any and all such redemption and right of redemption. And as such assignee, Complainant has brought this suit, in his own right, and for his own use and benefit.

Immediately after said Execution Sale, the said Big Sespe Oil Company, entered upon and took possession of the said real property; ever since then has practically continuously operated the oil producing wells thereon; and by means of such wells has extracted crude petroleum from the said property, and has sold the same at the various times, and for the respective

sums of money particularly set forth in the "Statement of Account" filed by said Defendant on its accounting in this suit, and also in its subsequently filed "Supplemental Statement" of Account.

Such moneys as have been thus collected and received by the said Defendant, have been found and adjudged by the confirmed Report of the Special Master herein, to be "profits" received by Defendant, and as such "profits" to be credits upon the redemption money required to be paid to effect redemption from the aforementioned Execution sale, and for which the said Defendant must account to this Complainant in this suit. And as the result of such accounting, it has been found and adjudged that the Defendant, Big Sespe Oil Company, through such collected and received profits, has not only been fully paid all the redemption money to which it is entitled as purchaser at the aforementioned execution sale, but also has in its hands a surplus from such profits, over and above such redemption money, which surplus the Master found and reported should be paid over to the Complainant in this suit.

Defendant has argued and contended that, on these above stated facts, Complainant, as an individual, has no right to require or to have the aforementioned and had accounting and credit of the "profits" received by Defendant as hereinbefore set forth; and that such accounting and credit can be required and had by the said William H. Cochran only "as Trustee," in which capacity he is not a party to this suit. And further

that, in no event, can Complainant, individually, recover these surplus profits, from Defendant.

This Honorable Court has overruled these objections and contentions of Defendant, and has confirmed the Master's Report as filed. But, as your Petitioner is advised and verily believes, this Honorable Court is reconsidering the advisability of making any final disposition of these surplus profits, without first hearing the aforesaid Trustee, your Petitioner, relative thereto.

EIGHTH: Your Petitioner is advised, verily believes, and concedes that the Complainant in this suit, as an individual, in his own right, and for his own personal use and benefit, had and has the right, both at law and in equity, to require and have from the Defendant, Big Sespe Oil Company, the certain aforementioned accounting of profits so received by Defendant as aforesaid, and to have credit of such profits on the said redemption money; and also has the further like right to demand and collect from the said Defendant, any and all balance or surplus of such profits as remains in its hands after the payment of the amount of the redemption money as fixed and required by the Statute of the State of California relative thereto.

And your petitioner further concedes that the Report of the Special Master in these particulars, was correct, and legally and equitably made; and also that the same was properly and legally confirmed by this Honorable Court.

NINTH: In order, however, that this Honorable Court may more fully inquire into, and thus the better

determine whether the aforementioned surplus profits should be paid over to the Complainant individually, or whether they are payable only to "William H. Cochran as Trustee for Pacific Crude Oil Company"; and also that the Final Decree may be entered in this suit, in the meantime, and without further delay; and also that future and additional litigation may be avoided, your Petitioner is willing and desirous to intervene in this suit, and to be made a party thereto. And your Petitioner is also willing and agrees that, if he be made such a party, the Final Decree herein may direct and order the Defendant, Big Sespe Oil Company, to pay such surplus profits into Court pending the further disposition thereof by this Honorable Court, if this Honorable Court shall determine that such is the best and proper course of procedure as to such surplus profits.

TENTH: In this suit, the Defendant, Big Sespe Oil Company, has not only been adjudicated to be a wilful trespasser on the mining lands involved herein, but by its own silence and admissions Defendant has also conceded that it has no lawful right to the possession, occupation, or operation which it has made of the premises.

The Special Master has found in his confirmed Report herein—and such finding has not been questioned by the Defendants—that since the commencement of this suit on July 2, 1919, the said Defendant, Big Sespe Oil Company, has wilfully failed and neglected to pump the oil producing wells on this property,

as they could and should have been pumped; and that, in consequence of such failure and neglect, the income and profits from the said property have been very materially reduced from what they otherwise could and would have been.

It is, therefore, not only just and fair, but also legally necessary and proper, that, without further delay, and to avoid the possibility, or even the claim of the possibility, of future litigation, the rights and interests of all the parties in any way concerned in this property, and in the aforementioned profits, should be definitely and legally ascertained and fixed, and the property returned to the possession of its lawful owner, so that not only may the wells now thereon be lawfully operated and pumped to their full capacity and production, but that further improvements may be made on the said property, and advantage thus had by its legal owner of the present highly favorable conditions for crude petroleum such as is being produced from the property in question.

ELEVENTH: Such necessary, fair, legal and equitable results can all be fully carried out and accomplished, by your Petitioner being permitted to intervene in this suit, and becoming a party thereto, as he now seeks to have done.

The only persons, companies and corporations who, in any way, can possibly now have any interest or concern in the said property, or in the said rents and profits therefrom, are the Defendant, Big Sespe Oil Company; and the said William H. Cochran, either

individually or as Trustee or in both such capacities. And the said Big Sespe Oil Company, and the said William H. Cochran are both in this Honorable Court as parties to this suit, although the latter is not such a party, in his capacity of Trustee.

As to the legal ownership of this property, there is no question or conflict between any of these parties, as it has been formally conceded in this suit by them all, that the legal title to the said property is vested in and is held by the said Cochran as Trustee.

Nor is there any question or conflict between the said Cochran "individually," and the said Cochran "as Trustee," as to the correctness and legality of the confirmed Report of the Special Master on and of this accounting of the Defendant of the profits which Defendant has collected and received from the said property, and of the application and credit of said profits.

Your Petitioner respectfully submits and concedes that, as has been already determined by this Honorable Court, there is no merit in the contention of the Defendant, that the Complainant individually, in this suit, is not entitled to the accounting of profits which has been had herein, nor as to the application of such profits on the redemption money required to be paid to Defendant; nor that Defendant may become subject to another suit or action, by the said Cochran "as Trustee," for the very same moneys, rents and profits, if the Report of the Special Master in these particulars should be confirmed, without the presence in this suit of the said Trustee.

TWELFTH: While your Petitioner thus admits and concedes that, "as Trustee," he has no interest in, nor ownership of the profits which have been accounted for in this suit, by the Defendant, Big Sespe Oil Company, he also alleges that he is interested and concerned in having some final and legal disposition made thereof, so that future additional litigation relative thereto, either by or against himself, will be avoided, will be made unnecessary, and will be legally prevented; and that thereby also he will be permitted to and shall hold and enjoy the said real property with its attendant income, profits and advantages, freed and quieted from any claim of the Defendant, Big Sespe Oil Company, thereto, or in any way in connection therewith.

And because of such latter mentioned interest and concern, your Petitioner respectfully submits that he is a proper, even though not a necessary party to this suit.

Your Petitioner recognizes the well established principle that Courts of Equity, having once obtained jurisdiction, will not permit litigation by piecemeal, but will determine the whole controversy so as to prevent future litigation.

And in accord with such principle, and in order that there may not be even a claim of any possible further question, controversy or litigation as to the ownership or disposition of the aforementioned profits, but that such questions may be completely, definitely and finally settled and determined in this pending suit, your Petitioner submits himself to the jurisdiction of this Hon-

orable Court, in this suit, and seeks to be made a party hereto.

THIRTEENTH: As a condition to his being permitted to intervene in this suit, and of his being made a party hereto, your Petitioner hereby accepts, ratifies and confirms every and all proceedings heretofore had herein, in the same manner and with like effect as if named in the original Bill of Complaint as a party hereto.

WHEREFORE, YOUR PETITIONER PRAYS that he be given leave to intervene in this suit, and to become a party hereto; and to that end to forthwith enter his appearance herein, in the same manner and with like effect as if named in the original Bill of Complaint, as a party Complainant; and that this suit may then forthwith proceed to Final Decree.

AND YOUR PETITIONER WILL EVER PRAY.

WM. H. COCHRAN,

As Trustee for Pacific Crude Oil Co.

THEODORE MARTIN,

Solicitor for Petitioner.

State of California,)
) ss.
County of Los Angeles.)

Wm. H. Cochran, being duly sworn, deposes and says: That he has read the foregoing Petition subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, excepting as to the matters therein stated to be alleged on information and belief, and as to those matters, he believes it to be true. He further says that he is the person

named in the said Petition as Trustee for the Pacific Crude Oil Company, and that he makes and subscribes such Petition as such Trustee.

WM. H. COCHRAN.

Subscribed and sworn to before me this 15th day of November, 1920.

(Notarial Seal)

LILLIE VOLLMER,
*Notary Public in and for the County of Los Angeles,
State of California.*

Endorsed: Received copy of the within Petition to Intervene and notice this 15th day of Nov., 1920. Cates & Robinson, Solicitor for Defendants.

Filed Nov. 17, 1920. Chas. N. Williams, Clerk; by P. W. Kerr, Deputy Clerk.

[TITLE AS BEFORE.]

Objections of Defendants to Application of William H. Cochran as Trustee to Intervene.

Come now the defendants, Big Sespe Oil Company, a corporation, and E. G. McMartin as Sheriff, and object to the allowance of the petition of William H. Cochran as trustee etc., to intervene in the above entitled cause, and object to and protest against allowing said William H. Cochran as trustee etc., to intervene in said cause upon the following grounds, to-wit:

I.

That said William H. Cochran as trustee is not interested in and claims no interest in the litigation now and heretofore pending between the original parties, or in the above entitled cause.

II.

Said proposed intervention is not and will not be in subordination to or in recognition of the propriety of the main proceeding in the above entitled cause.

III.

In and by said proposed intervention the petitioner, said William H. Cochran as trustee, seeks solely to enforce against one of these defendants, to-wit, Big Sespe Oil Company, a corporation, an alleged cause of action, purely legal and not equitable in its nature, and to procure for himself as such trustee, a money judgment against said last named defendant based upon a claim for damages by reason of an alleged trespass, and without giving said last named defendant its day in court or an opportunity to contest or defend against the said alleged claim.

IV.

These defendants, and especially defendant Big Sespe Oil Company, possesses and claims the right to contest and defend against the claims of said petitioner in said proposed intervention, and especially the right to contest and defend against any claim of said petitioner for a money judgment for damages or otherwise, and to have the issues raised by such claim and defense submitted to and passed upon by a jury under the constitution of the United States, and insists upon and does not waive such right.

V.

That said petitioner as such trustee has a plain, speedy, adequate and complete remedy at law for the protection and enforcement of his interests and claims

as set forth in the petition for intervention; and this court sitting as it does in the present case as a court of equity, has no jurisdiction to grant said petition for intervention or to grant any of the relief sought by said petitioner in and by said intervention.

VI.

That said petition for intervention does not state facts sufficient to show that said petitioner is entitled to intervene in this proceeding.

WHEREFORE, these defendants pray that said petition for intervention may be disallowed and dismissed.

DUDLEY W. ROBINSON,

A. I. McCORMICK,

Solicitors for Defendants.

Endorsed: Recd copy of the within objections this 29th day of November, 1920. Theodore Martin, Solicitor for Complt and Petitioner.

Filed Nov. 29, 1920. Chas. N. Williams, Clerk; by Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Specifications of Reasons for Not Approving Proposed Final Decree.

TO THE ABOVE NAMED PLAINTIFF, AND TO
THEODORE MARTIN, ESQUIRE, HIS SOLICITOR:

The defendants have examined the copy of the proposed final decree in the above entitled action which

you presented to them for the purpose of having them examine the same and determine whether or not they would approve the original thereof as provided in Rule 45 of the Rules of Practice. The defendants do not approve the proposed final decree for the following reasons:—

1st: That it assumes and proceeds upon the assumption that William H. Cochran as trustee for Pacific Crude Oil Company has been permitted to intervene in said action, and is actually a party to said action, whereas neither the terms, conditions nor state of facts upon which he might be permitted so to intervene, if at all, has been determined upon the record of said cause, and the petition for intervention has not been allowed.

2nd: That certain matters contained in the fifth paragraph of said proposed final decree have not been placed in issue in the trial of the above entitled cause, but are dependent upon a determination of issues, the presentation of which is anticipated by said proposed decree, and which matters are not relevant or material to the determination of any issue in said cause, the said matters being set forth in said paragraph in the following terms:

“And further that the said defendant, Big Sespe Oil Company, has no estate, right, title, interest, or claim, of any kind, form or description whatsoever, of, in, or to the real property in the Bill of Complaint herein particularly described, nor of, in or to the rents, income and profits therefrom.”

3rd: That certain matters contained in the sixth paragraph of said proposed final decree have not been placed in issue in the trial of the above entitled cause, but are dependent upon a determination of issues, the presentation of which is anticipated by said proposed decree, and which matters are not relevant or material to the determination of any issue in said cause, the said matters being set forth in said paragraph in the following terms:

“nor has the said defendant any right, interest, or claim whatsoever thereto.

That within days from and after the day of the date and of the entry of this Decree, the said defendant, Big Sespe Oil Company, is required to and shall pay over to the Clerk of this Court, the said balance or surplus together with the interest thereon, in all the sum of \$3,980.12; and the same shall be deposited by the said Clerk, in the Registry of this Court, to the credit of this suit, pending this Court's further order as to the final disposition thereof.”

4th: That the provision for the deposit of money into Court contained in that portion of the proposed final decree which is quoted in the above specification number three, is not properly within the purview of a final decree, is not authorized by law and is not a previously determined matter in the above entitled action.

5th: That certain matters contained in the seventh paragraph of said proposed final decree have not been placed in issue in the trial of the above entitled cause, but are dependent upon a determination of issues, the

presentation of which is anticipated by said proposed decree, and which matters are not relevant or material to the determination of any issue in said cause, the said matters being set forth in said paragraph in the following terms:

“That the said defendant, Big Sespe Oil Company, its officers, employees, agents and attorneys, and each and every of them, be, and they hereby are forever enjoined and restrained from asserting or setting up any claim or right whatsoever, of any estate, right, title or interest in or to the premises described in the said instrument, or in or to the personal property, buildings, machinery, equipment and fixtures therein or thereon; or to any of the income, rents, or profits from the said real property, since the said Third day of March, 1917.”

6th: That the provision enjoining and restraining the defendant from asserting any claim or right in the property in issue which is proposed in the language quoted in objection number five hereof, is not a previously determined matter in said action.

7th: That all the matters contained in the eighth paragraph of said proposed final decree have not been placed in issue in the trial of the above entitled action, but are dependent upon a determination of issues, the presentation of which is anticipated by said proposed decree.

Dated Los Angeles, California, November 20, 1920.

ALTON M. CATES,

DUDLEY W. ROBINSON,

Solicitors for Defendants.

Endorsed: Received copy of the within this 20th day of November, 1920. Theodore Martin, Attorney for Plaintiff.

Filed Nov. 22, 1920. Chas. N. Williams, Clerk; by R. S. Zimmerman, Deputy Clerk.

At a stated term, towit: the July Term, A. D., 1920, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the Thirtieth day of November, in the year of our Lord One thousand nine hundred and twenty:

Present:

The Honorable Oscar A. Trippet, District Judge.

Wm. H. Cochran, Plaintiff,)	
)	
vs.	)	No. E-26 Equity
)	
Big Sespe Oil Co.,)	
)	
Defendant.)	

This matter coming on this day for hearing on motion to intervene and settlement of final decree; and arguments having been made by plaintiff Wm. H. Cochran and by A. I. McCormick, Esq., counsel for defendant; it is by the Court ordered that the following items be stricken from the motion to intervene, to wit: Line 3 on page 4, line 29 on page 5, and paragraph No. 10 on page 8; and it is further by the Court ordered that this matter be continued to December 1, 1920, for settlement of decree.

[TITLE AS BEFORE.]

Order Granting Leave to Intervene.

This cause having come on to be heard on the Petition of William H. Cochran as Trustee for Pacific Crude Oil Company, that, as such Trustee, he is permitted to intervene in this suit, and that he be made a party Complainant hereto; and the said Petition having been argued by Counsel for the respective parties, and having been duly considered; and it appearing to this Court that the said Petitioner has such an interest in the complete and final determination of the issues involved in this suit, as to make him a proper party hereto, and also that the said Petitioner is such a proper party on the complete determination of this cause;

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

That the said Petitioner, William H. Cochran as Trustee for Pacific Crude Oil Company, be and he hereby is granted leave to forthwith intervene in this suit, as a party Complainant hereto; and to that end may forthwith enter his appearance herein, as such Complainant, in the same manner and with like effect as if named in the original Bill of Complaint, as such party Complainant.

That this order and the said intervention and appearance are and shall be without prejudice to any and all the proceedings heretofore had in this cause, and shall be in subordination to, and in recognition of, the propriety of such proceedings.

DATED, NOVEMBER 30th, 1920.

TRIPPET,

District Judge.

Endorsed: Filed Nov. 30, 1920. Chas. N. Williams, Clerk; Fred E. Subith, Deputy.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

WILLIAM H. COCHRAN, a	)	IN EQUITY
citizen of the State of New York,)	
	)	NO. E 26.
COMPLAINANT,)	
)	
AND)	
WILLIAM H. COCHRAN AS)	
TRUSTEE FOR PACIFIC)	
CRUDE OIL COMPANY,)	
)	
INTERVENING COMPLAIN-)	
ANT,	)	NOTICE OF
)	
— VERSUS —	)	APPEARANCE
)	
BIG SESPE OIL COMPANY,)	
a corporation formed, organized)	
and existing under and by virtue)	
of the laws of the State of Cali-)	
fornia, and a citizen and resident)	
of the said State; and)	
)	
E. G. McMARTIN, Sheriff of the)	
County of Ventura, State of Cali-)	
fornia, and also a citizen and res-)	
ident of the said State of Cali-)	
fornia,)	
DEFENDANTS.)	

SIRS:

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that William H. Cochran as Trustee

for Pacific Crude Oil Company, hereby intervenes in this suit, and also hereby appears as a party Complainant herein.

AND, also, further, that I am retained and hereby appear as Solicitor for him herein.

DATED NOVEMBER , 1920.

Yours etc.

THEODORE MARTIN,

Solicitor for Intervening Complainant, William H. Cochran as Trustee for Pacific Crude Oil Company.

TO THE CLERK OF THE ABOVE NAMED COURT, and MESSRS. CATES AND ROBINSON, SOLICITORS FOR THE ABOVE NAMED DEFENDANTS.

Endorsed: Filed Nov. 30, 1920. Chas. N. Williams, Clerk; Fred E. Subith, Deputy.

At a stated term, to wit: the July Term, A. D., 1920, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Tuesday, the Thirtieth day of November, in the year of our Lord, One thousand nine hundred and twenty:

Present:

The Honorable Oscar A. Trippet, District Judge.	
Wm. H. Cochran, Plaintiff,)
)
vs.	) No. E-26 Equity.
)
Big Sespe Oil Co., Defendant.)

This matter coming on at this time for settlement of master's fees and settlement of final decree; Wm.

H. Cochran, defendant, appearing on his own behalf; and A. I. McCormick, Esq., appearing as counsel for defendant; and Force Parker, having been called and sworn, testifies regarding fees; it is now by the Court ordered that this matter be and the same hereby is continued to December 1, 1920; and it is now by the Court ordered that the defendant have until Wednesday, December 1, 1920, at 10:00 o'clock A. M. in which to file an answer to the petition to intervene, and that the matter of signing the final decree be continued to that time.

At a stated term, to wit: the July Term, A. D., 1920, of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles, on Wednesday, the First day of December, in the year of our Lord One thousand nine hundred and twenty;

Present:

The Honorable OSCAR A. TRIPPET, District Judge.

Big Sespe Oil Co., Defendant.)	
)	
vs.	)	No. E 26 Equity.
)	
Wm. H. Cochran, Plaintiff,)	

This cause coming on this day for settlement of final decree; Wm. H. Cochran, plaintiff, appearing on his own behalf, and Theo. Martin, Esq., appearing as

counsel for plaintiff; A. I. McCormick, and D. S. Robinson, Esqs., appearing as counsel for the defendant; and D. S. Robinson, Esq., having presented an argument on behalf of defendant, and it having been ordered by the Court that exceptions be entered in favor of defendants, to proceedings; and Wm. H. Cochran having argued in his own behalf;

Now on motion of D. S. Robinson, Esq., counsel for defendant, it is ordered that exceptions be noted herein to the ruling of the Court, fixing the time within which to answer the petition in intervention and also an exception to the court's ruling. It is now by the Court ordered that this cause be and the same hereby is submitted to the Court for its consideration: thereafter the Court hands down its final decree, said decree being as follows, to-wit:

[TITLE AS BEFORE.]

Final Decree.

This cause came on to be further and finally heard at this Term of this Court, and was argued by Counsel for the respective parties hereto. Thereupon, and after due consideration thereof, it was

ORDERED, ADJUDGED AND DECREED AS FOLLOWS, TO-WIT:

FIRST: That upon the making of the certain redemption which is particularly described in the Interlocutory Decree heretofore made and entered in this suit, on the twenty-third day of April, 1920, which

said redemption is also by the said Interlocutory Decree adjudged to be the right of the Complainant, William H. Cochran; and also in order that said redemption may be made and effected and may be deemed and adjudged to have been so made and effected; the Defendant, Big Sespe Oil Company, is entitled to receive and to be paid the several respective and certain sums of money as found and reported by the Special Master herein, and as so reported, have been heretofore approved and confirmed by this Court. That the total amount of the said several sums of money, is \$20,210.27; and that such total is also the amount of the redemption money required to be paid to the Defendant, Big Sespe Oil Company, as aforesaid, upon, and to make and effect the said redemption.

SECOND: That since the time of the certain sale under execution, from which the aforesaid redemption is being made and had, viz: the Third day of March, 1917, and up to and including the month of September, 1920, the said Defendant, Big Sespe Oil Company, has collected and received certain profits from the real property which is involved in this suit, and which is particularly described in the Bill of Complaint herein.

That the total amount of such profits so collected and received by the said Defendant, Big Sespe Oil Company, is the sum of \$24,054.11.

That the said profits were and are a credit upon the aforementioned redemption money, so required to be paid to the said Defendant, Big Sespe Oil Company, as hereinbefore ordered, adjudged and decreed.

THIRD: That out of, from and by the aforesaid profits, the said Defendant, Big Sespe Oil Company, has been fully paid the aforesaid total redemption money, viz: \$20,210.27, so required to be paid to it, upon, and to make and effect the aforesaid redemption.

FOURTH: That by said payment, the said required redemption money was fully paid, satisfied and discharged; and the aforesaid redemption from the aforesaid execution sale of March Third, 1917, was completely made and effected.

That within ten days from and after the day of the date and of the entry of this Decree, the said Defendant, Big Sespe Oil Company, is required to and shall make, execute, and deliver unto the Complainant in this suit, William H. Cochran, a Certificate of such aforementioned redemption; said Certificate to be made in the form, and to be executed and acknowledged in the manner, particularly prescribed and required by the Laws and Statutes of the State of California, relative thereto.

FIFTH: That, by said payment and by said made and effected redemption, all and every the effect of the said execution sale of March Third, 1917, was and is terminated, and the Complainant, William H. Cochran, as the assignee of the judgment debtor, Pacific Crude Oil Company, on the said sale, is restored to all the then sold estate and rights of the said debtor. And further that the said Defendant, Big Sespe Oil Company, has no estate, right, title, interest, or claim, of any kind, form or description whatsoever, of, in, or to the real property in the Bill of Complaint herein

particularly described, nor of, in or to the rents, income and profits therefrom, by virtue of the said execution sale.

SIXTH: That after such full payment of the said redemption money, from the aforementioned profits, the said Defendant, Big Sespe Oil Company, then had and still has and holds, in its hands, a balance or surplus from the said collected and received profits, which said balance or surplus amounts to the sum of \$3,843.84.

That said Defendant, Big Sespe Oil Company, had no right to either collect, receive, or retain and hold said surplus profits, or any part thereof; nor has the said Defendant any right, interest, or claim whatsoever thereto.

That within ten days from and after the day of the date and of the entry of this Decree, the said Defendant, Big Sespe Oil Company, is required to and shall pay over to the Clerk of this Court, the said balance or surplus together with the interest thereon, in all the sum of \$3,980.12; and the same shall be deposited by the said Clerk, in the Registry of this Court, to the credit of this suit, pending this Court's further order as to the final disposition thereof.

SEVENTH: That the certain instrument in writing, without date, but purporting to have been executed on the Twenty-ninth day of August, 1918, and which was recorded in the Office of the Recorder of the County of Ventura, State of California, on the Third day of September, 1918, in Book 163, of Deeds, at pages 340 and following, and wherein and whereby

the Defendant in this suit, E. G. McMartin, Sheriff of the County of Ventura, State of California, purported to grant, bargain, and sell unto the Defendant herein, Big Sespe Oil Company, as the purchaser at the aforementioned execution sale of March Third, 1917, all the therein mentioned estate, right, title and interest of the judgment debtor, Pacific Crude Oil Company, on the said execution sale, of, in and to the certain real property in the Bill of Complaint in this suit mentioned and particularly described, be and the same hereby is set aside, annulled and held for naught. And, further, that the said Defendant, Big Sespe Oil Company, within ten days from and after the day of the date and of the entry of this Decree, is required to and shall surrender up the said instrument unto the Clerk of this Court, to be by him cancelled and destroyed.

That the said Defendant, Big Sespe Oil Company, its officers, employees, agents and attorneys, and each and every of them, be, and they hereby are forever enjoined and restrained from asserting or setting up any claim or right whatsoever, of any estate, right, title or interest in or to the premises described in the said instrument, or in or to the personal property, buildings, machinery, equipment and fixtures therein or thereon; or to any of the income, rents, or profits from the said real property, since the said Third day of March, 1917, by virtue of said execution sale or the deed made in pursuance thereof.

EIGHTH: That the said Defendant, Big Sespe Oil Company, shall forthwith quit and surrender up

unto the Intervening Complainant herein, William H. Cochran, as Trustee for Pacific Crude Oil Company, the aforementioned real property, together with all the personal property, buildings, machinery, equipment and fixtures therein and thereon; such surrender to be made free and clear of any and all liens, encumbrances, and adverse acts and things, created, made, or done by the said Defendant, or by any person, company, or corporation claiming by, through, from, or under it.

NINTH: That the Complainant in this suit, William H. Cochran, do have and recover from the said Defendant, Big Sespe Oil Company, his costs of this suit as taxed herein at the sum of \$366.97.

TENTH: That the real property which is involved in this suit, and which is hereinbefore particularly mentioned and referred to, is situated, bounded and described as follows, to-wit:

All that certain real property situate, lying and being in the County of Ventura, State of California, and which is bounded and described as follows, to-wit:

The West half of Lot No. 6 and Lots numbered 7 and 9, of Section 1, in Township 4 North, range 20 West, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in lot 9, section 1, in Township 4 North, range 20 West, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the Northwest corner of the Kentucky Oil Claim as said claim is described in that patent

executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898, and recorded in book 2, page 336, of Patents, records of Ventura County; thence

1st: East five (5) chains along the North line of said Kentuck Oil Claim; thence

2nd: North at right angles three (3) chains; thence

3rd: North sixty degrees (60°) West 4 chains; thence

4th: South $56\frac{1}{2}^{\circ}$ West to a point 4 chains North of the center of said section 1, Township 4 North, range 20 West, which point is also the Northwest corner of the Southeast quarter of said section 1; thence

5th: South 4 chains along the West line of said Southeast quarter of said section 1; thence

6th: East at right angles 5.95 chains to the West line of said Kentuck Oil Claim; thence

7th: North along the West line of said Kentuck Oil Claim to place of beginning, containing 9 acres more or less.

The "New York" Oil and Placer Mining Claim, located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in book 2, page 245, of Mines, Records of Ventura County, and included in the location of the "Nellie Belle" Placer Mining Claim hereafter referred to.

Also, all that part of the "Henry Gage" Placer Mining Claim not included in Lot 7, section 1, Township 4 North, range 20 West, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in

book 3, page 154, of Mines, Records of Ventura County.

Also, the "Elwood" Placer Mining Claim, located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in book 19, page 315, of Mines, Records of Ventura County.

Also, the "Nellie Belle" Placer Mining Claim, located by T. M. Hornada, E. F. Coldwell, and J. A. Clampitt, April 1, 1910, and recorded in book 19, at page 315, of Mines, Records of Ventura County.

ELEVENTH: That the matter of the allowance, assessment and collection of the compensation of Force Parker as Special Master having come on for hearing on the 30th day of November, 1920, at two o'clock in the afternoon, the parties appearing by their respective counsel, and having been continued for further hearing to this 1st day of December, 1920, at ten o'clock in the morning, with the same appearances.

And it appearing from the Special Master's Report, which is in all respects confirmed, the Special Master has on hand by deposit of the parties the following sums to-wit:

On account of the Complainant the sum of	\$152.25
From which there has been paid by the Special Master since the filing of his said Report, to Paul Lehnhardt on account of balance due to him for reporting and transcribing the proceeding the sum of	20.30

Leaving a balance on account of Complainant..\$131.95

On Account of the Defendants the sum of....\$131.65

It is hereby ordered in pursuance of and in conformity with Rule 68 of the Rules of Practice for the Courts of Equity of the United States, that the compensation allowed to said Special Master be, and hereby is allowed and fixed at the sum of \$750.00, such compensation to be charged against and borne by the Defendant, said Big Sespe Oil Company, after crediting upon said amount of said \$750.00 the aforesaid sum of \$131.65, which said sum of \$131.65 the Special Master is hereby authorized to retain as a part of said compensation, leaving a balance of \$618.35, which balance the said Defendant, Big Sespe Oil Company, is hereby ordered and directed forthwith to pay to said Special Master, with interest thereon at the rate of seven per cent. per annum from the date of this order. And for said compensation so allowed and fixed, the said Special Master is and shall be entitled upon application therefor to an attachment against the said Defendant, Big Sespe Oil Company, if upon notice of said compensation so fixed and allowed, the said Defendant, the Big Sespe Oil Company, does not pay the same within ten days.

And it is further ordered as further assurance of the prompt payment of said Special Master's Compensation, that said compensation is and shall be chargeable against any and all moneys allowed or credited to the Complainant as rents and profits by the decree herein and as so chargeable shall in the first instance be paid by the Complainant, in which case the sum so paid shall thereupon be taxed as costs in this proceed-

ing in favor of the Complainant and against the Defendant.

The said Special Master is further authorized and directed upon payment to him of the aforesaid compensation, to repay to the said Complainant the aforesaid balance of \$131.95.

MADE AND DONE IN OPEN COURT THIS
1st day of Dec, 1920.

OSCAR A. TRIPPET

District Judge.

Decree entered and Recorded this 1st day of December, 1920. Chas. N. Williams, Clerk; By Fred E. Subith, Deputy.

Endorsed: Filed Dec. 1, 1920. Chas. N. Williams, Clerk; By Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Waiver and Declaration of E. G. McMartin.

I the undersigned, E. G. McMARTIN do hereby certify that I am one of the defendants in the above entitled action, sued therein as Sheriff of the County of Ventura, State of California; I hereby acknowledge that I have been requested by Big Sespe Oil Company, a corporation, the other defendant in said action, to join with it in the prosecution of an appeal in the above entitled cause from the final decree in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit, which said decree was made and entered by the District Court of the United States for the Southern District of California, South-

ern Division, in the above entitled cause on December 1st, 1920; I hereby waive any and all rights that I may have to appeal from said decree or to a review of said decree above named or of any proceeding in said cause and I hereby declare that I have no intention to take any steps to appeal therefrom or for a review thereof by appeal or otherwise; I further agree that said defendant Big Sespe Oil Company, a corporation, may prosecute its appeal from said final decree and any other appeal or appeals that it may see fit to take, and may do and perform any and all acts in connection with said cause or any appeal as it may be advised without notice of any kind to me. without making me a party thereto, and without the service on me of any citation or any paper in connection therewith.

Dated December 18th, 1920.

E. G. McMartin.

Witness: _____

[illegible]

On this 18th day of December, 1920, before me Robert M. Sheridan a Notary Public in and for said County, personally appeared E. G. McMartin, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same.

Witness my hand and Official Seal

Robert M Sheridan
Notary Public in and for the County of Ventura,
State of California. (Seal)

Endorsed: Filed Jan. 3, 1921. Chas. N. Williams,
Clerk; Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Order Granting Severance of Defendants on Appeal.

On reading and filing the written acceptance of defendant E. G. McMartin herein, in and by which he acknowledges receipt of notice of the intention of defendant, Big Sespe Oil Company, a corporation, to appeal and declines to himself appeal, and consents to the separate appeal of said defendant, Big Sespe Oil Company, and on motion of Dudley W. Robinson and A. I. McCormick, solicitors for defendant, Big Sespe Oil Company, and good cause appearing therefor

IT IS HEREBY ORDERED that the severance of said two named defendants be and the same is hereby allowed and the said defendant, Big Sespe Oil Company, is hereby allowed to take and prosecute its said appeal separately and without the joinder of said defendant, E. G. McMartin.

Dated, Los Angeles, California, this 3d day of January, 1921.

Trippet,

United States District Judge.

Endorsed: Filed Jan. 3, 1921. Chas. N. Williams,
Clerk; Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Petition for Appeal.

TO THE HONORABLE Judges of the District Court
of the United States, for the Southern District of
California, Southern Division:

The above named defendant, Big Sespe Oil Company, a corporation, feeling aggrieved by the final decree made and entered in the above entitled cause on the first day of December, 1920, does hereby appeal from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, and prays that its appeal be allowed from the said decree to the said United States Circuit Court of Appeals for the Ninth Circuit, and that citation issue as provided by law, and that a transcript of the record, proceedings and documents, and a statement of the evidence upon which said decree was based, duly authenticated, be sent to the said United States Circuit Court of Appeals for the Ninth Circuit, sitting at San Francisco, California, under the rules of such court in such cases made and provided.

In connection with this petition your petitioner herewith presents and files its assignment of errors.

Petitioner further prays that an order of supersedeas may be entered herein pending the final disposition of the cause and that the amount of security which defendant shall give and furnish upon said appeal, may be fixed by the order allowing this appeal, and that upon giving said security, all further proceedings of this Court be suspended and stayed until the determina-

tion of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit. ,

Dated December 27, 1920,

Dudley W. Robinson

A. I. McCormick

Attorneys and Solicitors for Defendants.

Endorsed: Filed Jan. 3, 1921. Chas. N. Williams, Clerk; Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Assignments of Error on Appeal of the Big Sespe Oil Company, a Corporation.

Now comes Big Sespe Oil Company, a Corporation, a defendant in the above-entitled cause, and petitioner on appeal to the United States Circuit Court of Appeals for the Ninth Circuit, and in connection with its petition for appeal says that, in the record and proceedings and in the final decree in the aforesaid cause, manifest error has intervened to the prejudice of said appellant, to-wit:

1. The Court erred in not holding that the bill of complaint of complainant William H. Cochran, fails to state a cause of action in equity against the defendant Big Sespe Oil Company.

2. The Court erred in not holding that the complainant William H. Cochran has a plain, speedy, adequate and complete remedy at law.

3. The Court erred in denying the defendants' motion to dismiss the suit.

4. The Court erred in receiving the following testimony of the witness William H. Cochran upon direct examination, offered by and on behalf of the complainant, to-wit:

“BY MR. MARTIN:

Q. Please state what, if any, business relations or otherwise you have had with the Pacific Crude Oil Company mentioned in the pleadings in this case?

MR. ROBINSON: That is objected to as calling for a conclusion of the witness. If it is intended to call for transactions with the corporation, the existence of the proper officers with whom he could transact business, it assumes that he transacted business with the corporation. He might say that he transacted business with the corporation and it might not be business with the corporation at all. He might transact business with a person purporting to act for the corporation, but there is no foundation laid to show that any person had authority to act for the corporation in transacting business with him.

THE COURT: The objection is overruled.

A. Well, to fully explain my relationship with the Pacific Crude Oil Company I have to go back to February, 1914. I was coming to California—particularly Los Angeles—in February, 1914,—

THE COURT: The question may be too broad. I don't want to know anything about it except what may relate to this case.

Q. BY MR. MARTIN: Well, I will add to that question: Are you acquainted with the officers of the Pacific Crude Oil Company?

A. I was acquainted with the officers who were officers at the time of this assignment, if that is what you refer to.

Q. Yes, sir.

A. I was; yes, sir.

Q. Do you know who they are?

A. I know who they were then; I don't know who they may be now. I have no reason for knowing they have changed.

Q. Do you know who they were at the time of the execution of this instrument?

A. I do.

Q. The last instrument offered in evidence, this assignment to you.

A. I do.

Q. Will you tell the Court who they were.

MR. ROBINSON: Objected to as calling for a conclusion of the witness and not the best evidence.

THE COURT: Well, strictly speaking, the records of the Company would be the best evidence. I will let the witness testify who was acting as President of the Company at the time of the execution of this instrument in June, 1919.

A. At that time George Van Hook Potter was President, and I think it is C. Duplaine was secretary.

Q. BY THE COURT: Was anybody else acting as President or Secretary at that time, of this corporation, or pretending or claiming to be?

A. No, there was not.

Q. Are you familiar with the seal of the corporation?

A. I am.

Q. How long have you known it?

A. Well, I have actually seen impressions of it for some—early in 1914, and then later on I repeatedly saw the actual seal.

Q. BY MR. MARTIN: What, if any, knowledge have you as to the execution of that instrument—this assignment to you of the right of redemption by the Pacific Crude Oil Company, by the officers of that company?

MR. ROBINSON: That is objected to as assuming a fact not in evidence, and calling for a conclusion of the witness, and on the ground that no proper foundation has been laid to show who the officers of the corporation were.

MR. MARTIN: I asked him what, if any, knowledge he had.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception.

A. I saw both Mr. Potter and Mr. Duplaine sign and execute that instrument, and I saw the seal attached to it, and I also heard it acknowledged, and it was then delivered to me.

Q. BY THE COURT: That is an impression of the seal of the corporation attached to this instrument, is it?

A. Yes, sir; it is.

MR. ROBINSON: Will your Honor grant us an objection and exception to the question as to the authenticity of the seal?

THE COURT: Certainly; the objection will be overruled.

MR. ROBINSON: Exception."

5. The Court erred in receiving the following testimony of the witness William H. Cochran upon direct examination, offered by and on behalf of the complainant, to-wit:

Q. Who were the officers of this Pacific Crude Oil Company at the time the suit was commenced in 1914, as you have stated?

THE COURT: The Ventura suit?

MR. MARTIN: Yes, sir.

MR. ROBINSON: That is objected to as not the best evidence, and as incompetent, irrelevant and immaterial.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception.

A. At that time C. C. Duplaine was President, and a gentleman by the name of Tibbets was Secretary and Treasurer, and the General Counsel for the company was Charles H. Burr, and those officers were Directors of the company, and my recollection is that the other directors at that time were a Mr. Jackson and a Mr. Taylor."

6. The Court erred in receiving the following testimony of the witness William H. Cochran upon direct examination, offered by and on behalf of the complainant, to-wit:

"BY MR. MARTIN:

Q. And who were acting as the officers of this Company, the said Company, on March 1, 1918?

MR. ROBINSON: Objected to as calling for a conclusion of the witness.

THE COURT: The objection is overruled.

MR. ROBINSON: Exception.

A. I stated this morning who they were. I stated this morning that the President was Mr. George Van Hook Potter and the Secretary C. C. Duplaine, the two gentlemen who executed this assignment on the 11th of June."

7. The Court erred in receiving in evidence the following document marked in the records as Plaintiff's Exhibit No. 8, and being in words and figures as follows:

[See this document fully set forth verbatim in Plaintiff's Exhibit 8, admitted by District Court.]

8. The Court erred in finding and decreeing that ever since the sale at public auction on the 3rd day of March, 1917, as found and decreed in the second paragraph of the Interlocutory decree in the above cause, of all the estate, right, title and interest which the Pacific Crude Oil Company, a corporation, in said paragraph described as the judgment debtor, had of, in and to the certain real property in said second paragraph described, all and every the aforesaid estate, right, title and interest of the said judgment debtor Pacific Crude Oil Company of, in and to the said real property ever has been and still is, as found and decreed in paragraph fifth of said interlocutory decree, subject to redemption by the said judgment debtor or its assignee, from the aforesaid sale thereof under execution.

9. The Court erred in not finding and decreeing that ever since the 4th day of March, 1918, the Pacific Crude Oil Company as judgment debtor did not have, nor did its assignee have any right of redemption of the property in the bill of complaint and in the second paragraph of the interlocutory decree described as having been sold on the 3rd day of March, 1917.

10. The Court erred in not finding and decreeing that the complainant William H. Cochran acquired and has by assignment from the Pacific Crude Oil Company, a corporation, or otherwise, no right of redemption of the aforesaid property from the aforesaid execution sale to the defendant Big Sespe Oil Company.

11. The Court erred in finding and decreeing that such moneys, rents and profits as have been collected and received by the said purchaser Big Sespe Oil Company were, under the laws and statutes of the State of California relative thereto, a credit upon the money to be paid to redeem such property from such sale.

12. The Court erred in not finding and decreeing that no moneys except rents and profits collected and received by the said purchaser Big Sespe Oil Company were or ever have been a lawful or proper credit upon the moneys required to be paid to redeem such property from such sale.

13. The Court erred in finding and decreeing that before the expiration of the period of time ordinarily allowed under the laws of the State of California on redemption of such property, to-wit, within twelve (12) months after the aforesaid execution sale on March 3,

1917, the said debtor Pacific Crude Oil Company demanded in writing of the said purchaser Big Sespe Oil Company a written and verified statement of the amounts of rents and profits collected and received by said purchaser from said real property.

14. The Court erred in finding and decreeing that said written demand for a statement of the rents and profits was made by, or with due or proper authority from, the party; if any, entitled to redeem.

15. The Court erred in finding and decreeing that said demand for a statement of the rents and profits was in due and legal form and as prescribed and required by the said laws and statutes or that in all particulars it was duly, properly, legally and equitably made.

16. The Court erred in finding and decreeing that by reason of the failure and refusal of the defendant Big Sespe Oil Company to give such demanded statement of the rents and profits, the right of redemption in said interlocutory decree mentioned and the period of time for such redemption was extended for and until the expiration of a further period of time which had not expired at the time of the commencement of this suit.

17. The Court erred in finding and decreeing that by that certain instrument in writing bearing date the 11th day of June, 1919, and hereinabove set out in Assignment of Error number 7, the said judgment debtor Pacific Crude Oil Company sold, assigned, transferred and conveyed to the complainant William H.

Cochran, its certain right of redemption in said interlocutory decree described and adjudged.

18. The Court erred in finding and decreeing that said instrument bearing date the 11th day of June, 1919, purporting to be an assignment from the said judgment debtor, Pacific Crude Oil Company, to the complainant William H. Cochran, of its said right of redemption, was made, executed and delivered with due, proper and legal authority, or by any one having legal power or authority to execute the same.

19. The Court erred in finding and decreeing that the said instrument dated the 11th day of June, 1919, purporting to be an assignment from the said judgment debtor Pacific Crude Oil Company to the complainant William H. Cochran of its said right of redemption was and is sufficient to and actually did assign, transfer and convey unto the said William H. Cochran the complainant in this suit in his own right and for his own personal use and benefit, the aforesaid redemption and right of redemption in said interlocutory decree found and adjudged; and that thereby said William H. Cochran became lawfully seized and possessed of the right to make such aforementioned redemption in the form and manner prescribed by the laws and statutes of the State of California, in such cases made and provided and for his own use and benefit.

20. The Court erred in finding and decreeing that since the said 11th day of June, 1919, the complainant herein, William H. Cochran, ever has been or still is entitled to make such aforementioned redemption or to

institute and maintain this suit for the enforcement thereof.

21. The Court erred in finding and decreeing that this suit was commenced within the time limited for such suits by the statutes of said State of California relative thereto.

22. The Court erred in finding and decreeing that neither complainant nor said Pacific Crude Oil Company has been or is guilty of any laches, either at law or in equity in the commencement of this suit, or in the making of the aforesaid redemption.

23. The Court erred in finding and decreeing as set forth in paragraph thirteenth of said interlocutory decree that a certain instrument in writing in said paragraph described, wherein and whereby E. G. McMartin, Sheriff of the County of Ventura, State of California, purported to grant, bargain and sell unto the aforesaid purchaser Big Sespe Oil Company, all the estate, right, title and interest of the said judgment debtor Pacific Crude Oil Company, of, in and to the aforesaid real property in the bill of complaint, and in said interlocutory decree described, was and is void *ab initio*, and that the aforesaid purchaser Big Sespe Oil Company took nothing thereby on the ground that the same was made and given before the expiration of the period of time for the aforesaid redemption as hereinbefore found and adjudged.

24. The Court erred in finding and decreeing that said instrument or deed from said Sheriff shall be surrendered, cancelled and destroyed.

25. The Court erred in finding and decreeing that after the forfeiture of its charter and during the term of three years thereafter, said Pacific Crude Oil Company, under and pursuant to the statutes of the State of Delaware, retained its officers and directors with all the authority theretofore possessed by them and each of them and in not finding and holding that after the forfeiture of its charter and by reason of such forfeiture, and at the date of the execution of the aforesaid instrument of assignment dated June 11, 1919, the said Pacific Crude Oil Company, as a corporation, had not nor had the officers of said Pacific Crude Oil Company, nor had the directors thereof, any of the authority theretofore possessed by them or either of them in connection with the affairs of said corporation, and particularly that they had not, nor did any of them have any power or authority to execute or deliver the said instrument or assignment dated June 11, 1919, and hereinabove set out.

26. The Court erred in finding and decreeing that said Pacific Crude Oil Company was not required by any law or statute of the State of California to file in the office of the Secretary of State of said State of California, a certified copy of its articles of incorporation, or of its charter or of the statute or statutes or legislative or executive or governmental act or acts creating it, or any designation of any person to receive service of process for it in the said State of California.

27. The Court erred in finding and decreeing that said Pacific Crude Oil Company never did do any busi-

ness in the said State of California, and that it never did enter the said State for the purpose of doing any business therein within the meaning, intent and purpose of the statutes of said State of California in such cases made and provided; and further and consequently, that said Pacific Crude Oil Company at no time was subject to the said statutes or any of them, nor to any of the requirements, penalties or disabilities thereby created and imposed.

28. The Court erred in finding and decreeing that the moneys collected and received by defendant Big Sespe Oil Company from its sales of crude petroleum from the above mentioned real property constitute rents or profits which said defendant has received from the said property since March 3, 1917, and in finding and decreeing that such moneys are to be credited upon the money required to be paid by complainant to make and effect a redemption adjudged to him as in said interlocutory decree set forth.

29. The Court erred in not finding and decreeing that the moneys collected and received by the defendant Big Sespe Oil Company from its sales of crude petroleum from said above mentioned real property were merely the basis of computing the rents and profits from the said real property from which should be deducted the expenses of operating said property, in order to estimate the amount of profits or rents received by said defendant.

30. The Court erred in finding and decreeing that taxes paid by the defendant Big Sespe Oil Company to

John P. Carter, the United States Collector of Internal Revenue, were made in payment of taxes on account of said defendants own business and affairs, and were not made upon the gross receipts from the sale of oil produced from the property in question.

31. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company should not be credited with the payment of bond premiums described in the report of the Special Master in chancery in said cause, as a deduction from the gross receipts from the sales of crude petroleum in estimating the amount of rents and profits received by said defendant.

32. The Court erred in finding and decreeing that the unpaid item of Six hundred dollars (\$600.00) for back pay to one Hornada mentioned and described in the report of the Special Master in Chancery in said cause, should not be credited to the defendant Big Sespe Oil Company as an expense incurred in the operation of said real property and to be deducted from the gross receipts in estimating the amount of rents and profits received, and that the evidence fails legally to show an agreement to pay the same to said Hornada.

33. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company was a willful trespasser upon the property in question and is not entitled to be reimbursed by complainant for expenditures for repairs and operations of said property, and in not finding that such expenditures should be deducted as proper charges and expenses in the operation of said property by said defendant.

34. The Court erred in finding and decreeing that the sum of Eight hundred ninety-six and 50/100 (\$896.50) dollars paid to one Clampitt as President and manager of defendant company, should not be credited as an expense included in the operation of said property and to be deducted from the gross receipts in estimating the rents and profits.

35. The Court erred in finding and decreeing that the erection of new derricks and replacing of pumping machinery and equipment were not necessary repairs, but were replacements voluntarily and unnecessarily made by the defendant Big Sespe Oil Company upon the said property.

36. The Court erred in finding and decreeing that the new water system upon said property was not essential to the operation thereof, and that the expense involved in putting in this water system was not a necessary expense.

37. The Court erred in finding and decreeing that the road described in subdivision "d" of paragraph VIII of the report of the Special Master in Chancery in said cause on pages 18 and 19 of said report was not a necessary repair nor essential nor necessary to the producing or marketing of oil extracted therefrom by the defendant Big Sespe Oil Company.

38. The Court erred in finding and decreeing that the installing of a new water system, the re-construction of the old road, the placing of additional gauging tank on the property, the erection of the new derrick at well No. 1 and the drilling of well No. 5, were not nec-

essary to the preservation of the property or the producing or marketing of oil.

39. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company is not the owner of the personal property upon the real estate involved in this action.

40. The Court erred in not finding and decreeing that the defendant Big Sespe Oil Company was and is the owner of said personal property, and that the use thereof entered into the production of the profit from said realty and said defendant should receive credit therefor.

41. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company should be charged with interest at the rate of seven (7%) per cent per annum on the proceeds from the sale of oil from the time of their several respective payments.

42. The Court erred in finding and decreeing that the defendant should not be credited with any interest after April 1, 1918, upon the judgment on account of which redemption is sought to be made.

43. The Court erred in finding and decreeing that monthly rests in charging interest upon receipts should be made in taking the account adjudged in this action.

44. The Court erred in not finding and decreeing that it was a custom in the district where the real property in question is situated to fix the rental value of oil property at one-sixth ($1/6$) royalty of the gross production, and that the only proper charge against the

defendant Big Sespe Oil Company to be credited upon redemption is not to exceed one-sixth ($1/6$) royalty.

45. The Court erred in not finding and decreeing that the defendant Big Sespe Oil Company for the purposes of the accounting adjudged in this action, should not be treated as a trespasser, but should account, if at all, only for the rents and profits attributable to or actually received from the use of the realty.

46. The Court erred in approving and confirming the report of the Special Master in Chancery in the above-entitled cause in each and all of the respects and for each and all of the reasons heretofore allowed in assignments of error numbers 35 to 55 inclusive, and in overruling each and all of the exceptions of defendant Big Sespe Oil Company to the report of said Special Master.

47. That the Court erred in finding and decreeing that the total amount of the several sums of money which the defendant Big Sespe Oil Company is entitled to receive and be paid upon the redemption of the real property in question is the sum of \$20,210.27 and that such sum is the amount of the redemption money required to be paid to said Big Sespe Oil Company upon and to make and effect the said redemption; and in not finding that the sum which the said defendant Big Sespe Oil Company is entitled to receive and be paid upon such redemption is the sum of the original judgment, the sum of the \$17,340.50, being the amount for which said real property was sold at execution sale on the 3rd day of March, 1917, together with interest at

the rate of one (1%) per cent per month on said sum until said redemption is made.

48. The Court erred in finding and decreeing that the amount of profits collected and received by the defendant Big Sespe Oil Company from said property is the sum of \$24,054.11, and in not finding that the total amount of the profits so collected and received by said defendant is the sum of \$4,008.33, being a one-sixth ($1/6$) royalty upon the gross sales of crude petroleum from said property.

49. The Court erred in finding and decreeing that out of and from and by the said adjudged profits the said defendant Big Sespe Oil Company has been fully paid the aforesaid total redemption money, namely, viz., \$20,210.27, so required to be paid to it and upon and to make and effect the aforesaid redemption.

50. The Court erred in finding and decreeing that the money required to redeem said property and to which the defendant Big Sespe Oil Company, a corporation, was entitled, has been as alleged in said final decree or otherwise or at all fully paid, satisfied or discharged; and that the defendant Big Sespe Oil Company is or should be required to make, execute or deliver to the complainant William H. Cochran, a certificate of such aforementioned redemption in the form specified in said final decree or at all.

51. The Court erred in finding and decreeing that by such adjudged payment, or by such made and effected redemption, mentioned in and adjudged in said

final decree, all or any of the effect of said execution sale of March 3, 1917, was or is terminated.

52. That the Court erred in finding and decreeing that the complainant William H. Cochran, was or is the assignee of said Pacific Crude Oil Company on the said sale, and further erred in finding and decreeing that as such assignee, or in any other capacity or at all, the said complainant was or is restored to all or any of the estate and rights of said Pacific Crude Oil Company, sold on or by said sale, or that as such adjudged assignee or in any other capacity, or at all, said William H. Cochran was entitled to or did effect a redemption of any estate or rights of said Pacific Crude Oil Company, of in or to the whole or any part of said real property described in the bill of complaint herein.

53. The Court erred in holding and decreeing that this defendant Big Sespe Oil Company, after the payment of the redemption money or at any time, had or still has or holds in its hands a balance or surplus from the said collected and received profits amounting to the sum of \$3,843.84, or any other sum whatever; and the Court erred in further holding and decreeing that this defendant Big Sespe Oil Company had no right to collect, receive and retain or hold said adjudged surplus profits or any part thereof, and in finding and decreeing that said defendant has not any right, interest or claim thereto; and the Court further erred in ordering and decreeing that this defendant is required to or shall pay over to the Clerk of the District Court for the Southern District of California, the sum of \$3,980.12, or any other sum.

54. The Court erred in finding and decreeing that that certain deed from E. G. McMartin, Sheriff of the County of Ventura, State of California, to the defendant Big Sespe Oil Company described in paragraph seventh of the final decree, should be set aside, annulled and held for naught, and in setting aside, annulling and holding it for naught; and the Court further erred in ordering and decreeing that the defendant surrender up the said deed unto the Clerk of this Court to be by him cancelled and destroyed.

55. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company, its officers, employees, agents and attorneys, and each and every of them, or any of them, should be forever enjoined and restrained and in enjoining and restraining them or any of them from asserting or setting up any claim or right whatsoever of any estate, right, title or interest in or to the premises described in the said instrument or in or to the personal property, buildings, machinery, equipment and fixtures therein or thereon, or to any of the income, rentals or profits from the said real property since the said 3rd day of March, 1917, by virtue of said execution sale and deed made in pursuance thereof.

56. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company, its officers, employees, agents and attorneys and each and every of them, or either or any of them, should be forever or at all enjoined and restrained, and in enjoining and restraining them or any of them from asserting or setting

up any claim or right whatsoever of any estate, right, title or interest in or to the personal property, machinery and equipment upon the real property described in the bill of complaint herein.

57. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company shall forthwith or at all quit or surrender up to the intervening complainant herein, William H. Cochran, as trustee for Pacific Crude Oil Company, the aforementioned real property, together with all the personal property, buildings, machinery, equipment and fixtures therein and thereon.

58. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company shall forthwith or at all quit and surrender up unto the intervening complainant herein, William H. Cochran, as Trustee for Pacific Crude Oil Company, the aforementioned personal property, machinery and equipment on said aforementioned real property, or any part or portion of any of said personal property, machinery or equipment.

59. The Court erred in ordering and decreeing that the complainant William H. Cochran have and recover of the defendant Big Sespe Oil Company, his costs of this suit, or any costs at all; and the Court erred in ordering and decreeing that the compensation allowed to the Special Master or any compensation to said Special Master be charged against or borne by the defendant Big Sespe Oil Company, or that said Special Master shall be entitled to or have an attachment against

the said defendant Big Sespe Oil Company for or on account of such or any allowed compensation, or at all.

60. The Court erred in allowing William H. Cochran, as trustee for Pacific Crude Oil Company to intervene in said action and in allowing and granting the petition of said William H. Cochran, as such Trustee for leave to intervene therein, and the Court erred in not finding and decreeing that the said petition for leave to intervene did not state facts sufficient to entitle said petitioner to intervene in said cause, and the Court erred in not sustaining the objections of the defendants to said petition for leave to intervene.

61. The Court erred in entering the final decree upon the complaint in intervention of the intervening complainant, William H. Cochran, as such Trustee, without trial of the issues presented by his said complaint in intervention, and in making and entering a final decree based in part upon said complaint in intervention and granting to the said William H. Cochran, as such Trustee, relief prayed for in said complaint, or any relief at all in this action.

62. The Court erred in finding and decreeing that the Pacific Crude Oil Company, a corporation, ever at any time had or possessed the right to redeem the real property described in the bill of complaint herein from the said execution sale thereof to this defendant mentioned and described in said bill of complaint; and the Court further erred in holding and decreeing that said Pacific Crude Oil Company ever at any time, by virtue of the purported assignment from said Pacific Crude

Oil Company to said complainant, hereinbefore set forth and described, or by any other means or at all, sold or assigned or transferred or conveyed any right or privilege to redeem said property from said execution sale, and in finding and decreeing that said William H. Cochran, complainant, at any time had or possessed the right to redeem said property or any part thereof, from said sale or had at any time the right to commence or maintain this action.

63. The Court erred in make, in rendering and in entering the final decree and interlocutory decree in this cause, because and for the reason that the Court, being a United States District Court, had no jurisdiction to render said final decree or any decree in said cause, other than a decree dismissing the bill of complaint herein.

64. The Court erred in not finding and decreeing that it had no jurisdiction of this action or the subject matter thereof, and in not finding and decreeing that it had no jurisdiction to make, render or enter the interlocutory or final or any other decree herein other than a decree dismissing the bill of complaint in said cause.

65. The Court erred in not finding and decreeing that it had no jurisdiction of this action or of the subject matter thereof, and in not ordering and decreeing a dismissal of the bill of complaint herein on the ground and for the reason that the evidence was insufficient to show that the cause of action was one between citizens of different states of the United States.

WHEREFORE the said Big Sespe Oil Company, petitioner and appellant herein, prays that the decree

and judgment of said District Court be reversed, and that the said District Court may, by mandate, be directed to enter a final decree in favor of said petitioner, dismissing said action and awarding to said petitioner the costs which it has incurred herein, and allowing all of the other matters and things in which it is herein set forth and alleged that the said District Court erred.

DUDLEY W. ROBINSON,

A. I. McCORMICK,

*Attorneys for Big Sespe Oil Company,
Petitioner and Appellant.*

Endorsed: Filed Jan. 3, 1921. Chas. N. Williams,
Clerk. Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

**Order Allowing Appeal and Fixing Supersedeas
Bond.**

On reading the petition of Big Sespe Oil Company, a corporation, one of the defendants in the above-entitled action, for the allowance of an appeal to said defendant from the final decree in the above entitled cause, and the waiver and declaration of E. G. McMartin, Sheriff of the County of Ventura, State of California, the other defendant herein, now on file herein, and upon motion of Dudley W. Robinson and A. I. McCormick, solicitors and counsel for said appealing defendant, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the final decree heretofore filed and

entered herein, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations, statement of the evidence, and all proceedings be transmitted to the said United States Circuit Court of Appeals for the Ninth Circuit, in the manner and within the time allowed by law. It is further ordered that the bond on appeal be and the same is hereby fixed at the sum of thirty thousand six hundred dollars, and that upon the filing of said bond according to law and the approval thereof by the Court, all further proceedings in this Court and all further proceedings on or under said final decree be suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals; the filing and approval of said bond to act as a supersedeas and also as a bond for cost and damages on appeal.

IT IS FURTHER ORDERED that upon the filing and approval of said supersedeas bond the operation and effect of that portion of said final decree wherein it is ordered and adjudged "that the said defendant Big Sespe Oil Company, its officers, employees, agents and attorneys and each and every of them be, and they hereby are forever enjoined and restrained from asserting or setting up any claim or right whatsoever of any estate, right, title or interest in or to the premises described in the said instrument, or in or to the personal property, buildings, machinery, equipment and fixtures therein or thereon; or to any of the income, rents or profits from the said real property, since the

said 3rd day of March, 1917, by virtue of said execution sale, and the deed made in pursuance thereof," shall be and hereby it is suspended and stayed until the determination of said appeal by said United States Circuit Court of Appeals.

Dated at Los Angeles, California, Jan 3, 1921.

TRIPPET,

United States Circuit Judge.

Endorsed: Filed Jan. 3, 1921. Chas. N. Williams,
Clerk. Fred E. Subith, Deputy.

[TITLE AS BEFORE.]

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That I, BIG SESPE OIL COMPANY, a corporation, as principal, and George Renwick and L. A. Clampitt and Fannie Clampitt as sureties, are held and firmly bound until WILLIAM H. COCHRAN, individually, and WILLIAM H. COCHRAN, as Trustee for Pacific Crude Oil Company, jointly and severally, in the sum of Thirty thousand six hundred (\$30,600.00) Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators, successors and assigns; for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, administrators and assigns, firmly by these presents.

Sealed with our seals and dated this 3rd day of January, 1921.

The condition of the above obligation is such that whereas, on the first day of December, 1920, in the District Court of the United States for the Southern District of California, Southern Division, in a suit pending in that Court wherein William H. Cochran was complainant, and William H. Cochran as trustee for Pacific Crude Oil Company was intervening complainant, and Big Sespe Oil Company, a corporation, and E. G. McMartin were defendants, being No. E-26 in equity, of the records of said Court, a decree was rendered against the said Big Sespe Oil Company, a corporation, and the said Big Sespe Oil Company having obtained and been allowed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the said decree.

Now, if the said Big Sespe Oil Company, a corporation, shall prosecute said appeal to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

BIG SESPE OIL COMPANY,
a corporation,
By L. A. CLAMPITT,
President.

By DR. I. D. MILLS,
Secretary.
Principal.

GEO. RENWICK,
Surety.

L. A. CLAMPITT,
Surety.

FANNIE CLAMPITT,
Surety.

UNITED STATES OF AMERICA,)
)
 STATE OF CALIFORNIA,) SS.
)
 COUNTY OF LOS ANGELES.)

On the 3rd day of January, 1921, personally appeared before me George Renwick and L. A. Clampitt, known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and they acknowledged to me that they executed the same as their free act and deed for the purposes therein set forth, and the said George Renwick and L. A. Clampitt being by me duly sworn says each for himself and not one for the other, that he is a resident and freeholder of the said County of Los Angeles in said Southern District of California, and that he is worth the sum of Thirty thousand six hundred (\$30,600.00) dollars over and above his just debts and legal liability and property exempt from execution.

GEO. RENWICK,
 L. A. CLAMPITT.

Subscribed and sworn to before me this 3rd day of January, 1921.

(Seal)

CHAS. N. WILLIAMS,
Clerk U. S. District Court, Southern District of California.

UNITED STATES OF AMERICA,)
)
 STATE OF CALIFORNIA,) SS.
)
 COUNTY OF LOS ANGELES.)

On the 4th day of January, 1921, personally appeared before me Fannie Clampitt, known to me to be one of

the persons described in and who duly executed the foregoing instrument as a party thereto, and she acknowledged to me that she executed the same as her free act and deed for the purposes therein set forth, and the said Fannie Clampitt being by me duly sworn says for herself and not for the other party to said instrument, that she is a resident and freeholder of the said County of Los Angeles, in said Southern District of California, and that she is worth the sum of Thirty thousand six hundred (\$30,600.00) dollars over and above her just debts and legal liabilities and property exempt from execution.

FANNIE CLAMPITT.

Subscribed and sworn to before me this 4th day of January, 1921.

(Seal)

CHAS. N. WILLIAMS,

Clerk U. S. District Court, Southern District of California.

Examined and recommended for approval as provided in rule 29.

DUDLEY W. ROBINSON,

Attorney.

I HEREBY APPROVE the foregoing bond this 4th day of January, 1921.

TRIPPET,

Judge.

Endorsed: Filed Jan. 4, 1921. Chas. N. Williams, Chas. N. Williams, Clerk. By....., Deputy Clerk.

[TITLE AS BEFORE.]

Order.

It appearing that the JULY 1920 TERM of this Court within which the appeal in the above-entitled cause was taken, expires this day, and that the time allowed by law for settling and filing a Statement of the Evidence in said cause to become a part of the record for the purpose of an appeal, has not expired, and good cause appearing therefore, IT IS ORDERED, that the matter of completing, settling and filing such Statement of the Evidence and Record on Appeal in said cause be continued to the next term of this Court, to be then done within the time allowed by law.

Dated at Los Angeles, California, January 8th, 1921.

TRIPPET,

U. S. District Judge.

Endorsed: Filed Jan. 8, 1921. Chas. N. Williams,
Clerk. By R. S. Zimmerman, Deputy Clerk.

[TITLE AS BEFORE.]

Order.

Good cause appearing therefor, it is hereby ordered that the time within which the defendant and appellant Big Sespe Oil Company, a corporation, may settle and file a statement of the evidence in said cause to become a part of the record for the purpose of appeal be, and the same hereby is extended to and including the 4th day of March, 1921.

540 *Big Sespe Oil Company, a Corp., vs.*

Dated Los Angeles, California, Jan. 31, 1921.

TRIPPET,

District Judge.

Endorsed: Filed Jan. 31, 1921. Chas. N. Williams,
Clerk. By R. S. Zimmerman, Deputy Clerk.

[TITLE AS BEFORE.]

Order.

Good cause appearing therefor, it is hereby ordered that the time within which the defendant and appellant Big Sespe Oil Company, a corporation, may settle and file a statement of the evidence in said cause to become a part of the record for the purpose of appeal be, and the same hereby is extended to and including the 24th day of March, 1921.

Dated Los Angeles, California, March 2, 1921.

TRIPPET,

District Judge.

Endorsed: Filed Mar. 2, 1921. Chas. N. Williams,
Clerk. By R. S. Zimmerman, Deputy Clerk.

Plaintiff's Exhibit No. 1.

IN THE SUPERIOR COURT OF THE STATE OF
CALIFORNIA, IN AND FOR THE
COUNTY OF VENTURA.

BIG SESPE OIL COMPANY, a)
corporation,)

Plaintiff,)

vs.)

WILLIAM H. COCHRAN, as)
Trustee for Pacific Crude Oil)
Company, a Corporation, and)
PACIFIC CRUDE OIL COM-)
PANY, a corporation,)

Defendants.)

JUDGMENT.

-----)
The above entitled cause coming on regularly for trial before this Court on the 7th and 8th days of September, 1916, sitting without a jury, a trial by jury having been waived; and the plaintiff then and there appearing by Alton M. Cates, Esq., of the firm of Cates and Robinson, its attorneys; and the defendants having also then and there appeared by its attorney, J. R. Whittemore, Esq., the defendant William H. Cochran, Esq., also appearing in person and as counsel for both of said defendants; and the evidence having been introduced by the respective parties, the cause was submitted for decision and the Court having made and filed its written decision, and findings of fact and conclusions of law,

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said

action be dismissed as against said defendant, William H. Cochran as trustee for Pacific Crude Oil Company, a corporation, and that said plaintiff have and recover judgment against Pacific Crude Oil Company, a corporation, in the sum of Fifteen Thousand (\$15,000.00) Dollars, together with interest thereon at six (6%) per cent per annum from March 30, 1914, and that plaintiff have judgment against defendant, Pacific Crude Oil Company, a corporation, for its costs herein, hereby taxed at \$55.70.

Done this January second, 1917.

Merle J. Rogers.

Judge of said Superior Court.

(Endorsed) Filed Jan 2, 1917. J. B. McCloskey, Clerk, By L. H. Durley, Deputy Clerk.

No. E-26 Eq. Cochran vs. Big Sespe Oil Co. Pltff's EXHIBIT No. 1. Filed 6 April, 1920. CHAS. N. WILLIAMS, Clerk; By Ernest J. Morgan, Deputy Clerk.

Plaintiff's Exhibit No. 2.

JUDGMENT DOCKET

No. of Suit	Judgment Debtors	Judgment Creditors	Judgment
5309	Pacific Crude Oil Company, a Corp.	BY Sespe Oil Company, a Corporation.	6% Int. from March 30, 1914. Judgment \$15,000.00 and costs \$55.70.
5309	Pacific Crude Oil Company, a Corp.	BY Sespe Oil Company, a Corporation.	Deficiency Judgment \$135.75.

IN THE SUPERIOR COURT OF THE COUNTY OF VENTURA,
STATE OF CALIFORNIA

Big Sespe Oil Co. a Corp.	} No. 5309
vs.	
Pacific Crude Oil Co. a Corp.	

VENTURA COUNTY

Time of Entry	Where Entered in Judgment Book		Date of Docketing		Appeals— When Taken	Judgment of Appellate Court	Satisfaction of Judgment	When Entered	
	Month	Day Year	Book	Page	Month	Day Year		Month	Day Year
Jan. 2, 1917			8	140	Jan. 2, 1917	4:30	Satisfied to amount of \$19,504.75.	Mar. 10, 1917	
					Mar. 10, 1917	2:00			

I, L. E. Hallowell, County Clerk of the County of Ventura, State of California and *ex-officio* Clerk of the Superior Court in and for said County, hereby certify that the above and foregoing is a full, true and correct transcript of the entries on the Judgment Docket in the above entitled action, so far as the same concerns Pacific Crude Oil Co. etc.

Witness my hand and seal of said Superior Court this 31st day of March, 1920.

(Seal)

L. E. HALLOWELL, County Clerk.
..... Deputy Clerk,

No. E-26-Eq.
Cochran

vs.
Big Sespe
Pltff. Exhibit

No. 2

Filed 6 April 1920.

CHAS. N. WILLIAMS, Clerk.

By Ernest J. Morgan,
Deputy Clerk.

SHERIFF'S OFFICE,)
County of Ventura,) ss.
State of California.)

Return on Execution—Levy and Sale of Real Estate.
No. 5309

I, E. G. McMartin, Sheriff of the County of Ventura, do hereby certify that under and by virtue of the within and hereunto annexed Writ of Execution, by me received on the 3rd day of February A. D. 1917, I did, on the 3rd day of February A. D. 1917, levy upon the lands hereinafter described, and noticed the same for sale as the law directs, by posting written notice of the time and place of the sale, particularly describing the property, for twenty days successively in three public places of the Township where said property is situated, and also where said property was to be sold, and publishing a copy thereof once a week for the same period in the Fillmore Herald, a newspaper published in said County of Ventura, and on Saturday, the 3rd day of March A. D. 1917, at 10 o'clock A. M., of said day, in front of the Court House door of said County, the time and place fixed for said sale, I did attend and offered for sale at PUBLIC AUCTION, for lawful money of the United States, the property described:

In the County of Ventura, State of California: The West half of Lot No. 6 and Lots numbered 7 and 9 of Section 1, in Township 4 North, Range 20 West, of

San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in Lot 9, Section 1 in Township 4 North, Range 20 West, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the northwest corner of the Kentuck Oil Claim as said claim is described in that patent executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898 and recorded in Book 2, page 336 of Patents, Records of Ventura County, thence

1st: East five (5) chains along the north line of said Kentuck Oil Claim, thence

2nd: North at right angles three (3) chains; thence,

3rd: North sixty (60 degrees) degrees West four (4) chains; thence

4th: South fifty-six and one-half ($56\frac{1}{2}$) degrees west to a point four (4) chains North of the center of said section 1, Township 4 North, Range 20 West, which point is also the Northwest corner of the Southeast quarter of said section 1; thence

5th: South four (4) chains along the west line of said S. E. quarter of said section 1;

6th: East at right angles 5.95 chains to the west line of said Kentuck Oil Claim; thence

7th: North along the West line of said Kentuck Oil claim to place of beginning, containing 9 acres more or less;

All the right, title and interest of the defendant Pacific Crude Oil Company, subject only to paramount title of the United States, of, in and to the following described placer mining claims, situate, lying and being in the said County of Ventura, State of California, and particularly described as follows:

The New York Oil and Placer mining claims located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in Book 2, page 245 of Mines, Records of Ventura County and included in the location of the "Nellie Belle" Placer Mining Claim hereafter referred to.

Also all that part of the Henry Gage Placer mining claim not included in Lot 7 Section 1, Township 4 North, Range 20 West, S. B. M., located by Henry T. Gage, December 22, 1890 and recorded in Book 3, Page 154 of Mines, records of Ventura County.

Also the Elwood Placer mining claim located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in Book 10, page 315 of Mines, Records of Ventura County.

Also the "Nellie Belle" placer mining claim, located by T. M. Hornada, E. F. Coldwell, and J. A. Clampitt, April 1, 1910, and recorded in Book 19 at page 315 of Mines, records of Ventura County.

And sold the whole of the same to Big Sespe Oil Company, a corporation, for the sum of Seventeen thousand three hundred forty 50/100—Dollars, in lawful money of the United States; said Big Sespe Oil Company, a corporation, being the highest bidder, and

said sum being the highest bid for the same; and I have given said purchaser Big Sespe Oil Company, a corporation, a Certificate of said sale, and have filed a duplicate thereof for record with the Recorder of said County of Ventura.

And I further certify that I deducted from	
the said sum of	\$17,340.50
My fees, commission and expenses, amount-	
ing to the sum of	114.75
Leaving a net balance of	<u>\$17,225.75</u>

Which I have paid to Plaintiff's attorney, whose receipt therefor is hereto attached.

E. G. McMARTIN, *Sheriff*.

By R. N. HAYDON, *Under Sheriff*.

Dated at Ventura, Cal., this 10th day of March
A. D. 1917.

No. E. 26—Eq. Cochran vs. Big Sespe Oil Co.
Pltffs EXHIBIT No. 3. Filed 6 April, 1920. CHAS.
N. WILLIAMS, Clerk; By Ernest J. Morgan, Deputy
Clerk.

SHERIFF'S OFFICE,)	
)	
COUNTY OF VENTURA,	)	ss.
)	
STATE OF CALIFORNIA,)	

Return on Levy and Sale of Personal Property

I, E. G. McMartin, Sheriff of the County of Ventura, do hereby certify that under and by virtue of the within and hereunto annexed writ of execution by me

received on the 3rd day of February A. D. 1917, I did, on the 9th day of February A. D. 1917 levy upon the personal property hereinafter described, and noticed the same for sale as the law directs, by posting written notice of the time and place of sale, particularly describing the property, for eight days successively in three public places of the Township where said property was sold, and on Saturday, the 17th day of February A. D. 1917, at 11 o'clock A. M., of said day at the Pacific Crude Oil Wells said County, the time and place fixed for said sale, I did attend and offered for sale at PUBLIC AUCTION, for lawful money of the United States, the property described:

Four (4) oil wells including tubing, casing, rods, pumps, pumping jacks and derricks.

One (1) pumping plant including 20 H. P. Foos gas Engine.

One (1) cook house, one (1) bunk house, one (1) Engine house. One blacksmith shop, two (2) 300 barrel wooden tanks.

One (1) 25 H. P. Steam boiler, two (2) 12 H. P. steam engines, one string 5 $\frac{5}{8}$ " oil Well drilling tools, one half mile 2" oil pipe line, one quarter mile 1" and 2" water pipe line, one (1) cast iron cooking range, one (1) lot of Miscellaneous cooking utensils, one (1) lot of Miscellaneous small tools.

And sold the whole of the same in one separate parcel to Big Sespe Oil Company, a corporation, for the sum of Three hundred Dollars, in lawful money of the United States, said Big Sespe Oil Company, a corpora-

tion, being the highest bidder, and said sum being the highest bid for the same; and I have given said purchaser Big Sespe Oil Company, a corporation, a Certificate of said Sale.

And I further certify that I deducted from the	
said sum of	\$300.00
My fees, commission and expenses, amounting	
to the sum of	21.00
	<hr/>
Leaving a net balance of	\$279.00

Which I have paid to Plaintiff's attorney, whose receipt therefor is hereto attached, and I hereby return this writ unsatisfied.

E. G. McMARTIN, *Sheriff*.

By R. N. HAYDON, *Under Sheriff*.

Dated at Ventura, Cal., this 17th day of February
A. D. 1917.

IN THE SUPERIOR COURT OF THE STATE
OF CALIFORNIA IN AND FOR THE
COUNTY OF VENTURA.

THE PEOPLE OF THE STATE OF CALIFOR-
NIA TO THE SHERIFF OF THE COUNTY
OF VENTURA, GREETING:

WHEREAS, on the second day of January A. D. 1917, Big Sespe Oil Company, a corporation, recovered a judgment in the said Superior Court of the State of California, in and for the County of Ventura against Pacific Crude Oil Company, a corporation, for the sum of Seventeen thousand four hundred eighty-two and

50/100ths (\$17,482.50) dollars damages, with interest at the rate of seven per cent per annum till paid, together with fifty-five and 70/100ths (\$55.70) dollars costs and disbursements at the date of said Judgment, as appears to us of record.

AND WHEREAS, the Judgment Roll in the action in which said Judgment is entered, is filed in the Clerk's office of said Court in the County of Ventura, and the said Judgment was docketed in said Clerk's office, in said County, on the second day of January 1917 and entered in Judgment Book 8 at page 140.

And the sum of \$17,640.50 with interest is now (at the date of this writ) actually due on said Judgment.

NOW YOU, THE SAID SHERIFF, are hereby required to make the said sums, due on the said Judgment for damages, with interest as aforesaid, and costs and accruing costs, to satisfy the said Judgment out of the personal property of said debtor Pacific Crude Oil Company, or if sufficient personal property of said debtor cannot be found, then out of the real property in your County belonging to said Judgment debtor on the day whereon said Judgment was docketed in the said Ventura County, or at any time thereafter, and make return of this writ within ten (10) days after your receipt hereof, with what you have done endorsed hereon.

WITNESS, HON. MERLE J. ROGERS, Judge of said Superior Court of the State of California, at the Court House in the City of San Buenaventura, County of Ventura, this second day of February A. D. 1917.

ATTEST my hand and the seal of said Court, the day and year last above written.

J. M. McCLOSKEY, Clerk,

(Seal) By Stephen A. Gavin, Deputy Clerk.

(Endorsed) Filed Mar 10 1917. J. B. McCloskey, Clerk; by L. H. Durley, Deputy Clerk.

STATE OF CALIFORNIA,)
County of Ventura,) SS.

I, L. E. HALLOWELL, County Clerk and *ex-Officio* Clerk of the Superior Court in and for the County of Ventura, do hereby certify that the foregoing is a true and correct copy of the original Judgment, Execution and Sheriff's Return on Execution in the within entitled Action, No. 5309, and the endorsements thereon, now remaining on file and of record in this office.

WITNESS my hand and seal of said Court this 27th day of March, A. D. 1920.

(Seal) L. E. HALLOWELL, Clerk,

By....., Deputy Clerk.

(Endorsed)

No. E-26-Eq. Cochran vs Big Sespe Oil Co. Pltff's EXHIBITS No. 1 & 3—see inside cover Filed 6 April 1920 CHAS. N. WILLIAMS, Clerk By Ernest J Morgan Deputy Clerk

Plaintiff's Exhibit No. 4.

IN THE SUPERIOR COURT OF THE COUNTY
OF VENTURA, STATE OF CALIFORNIA.

Big Sespe Oil Company,)	
a Corporation,	)	SHERIFF'S CER-
)	
Plaintiff,	)	TIFICATE OF
)	
vs.	)	SALE OF REAL
)	
William H. Cochran, et al.,	)	ESTATE ON
)	
Defendants.	)	EXECUTION.

I, E. G. McMartin, Sheriff of the County of Ventura, do hereby certify that by virtue of an execution in the above entitled action, tested the 2nd day of February, A. D. 1917, by which I was commanded to make the amount of Seventeen thousand six hundred forty 50/100 Dollars, lawful money of the United States, to satisfy the judgment in said action, with costs and interest thereon, out of the personal property of Pacific Crude Oil Company, a corporation, one of the Defendants in said action, and if sufficient personal property could not be found, then out of the real property belonging to the said Defendant, on the 2nd day of February, 1917, or at any time thereafter, as by the said writ, reference being thereunto had, more fully appears, I have levied on and this day sold at Public Auction, according to the Statute in such cases made and provided, to Big Sespe Oil Company, a corporation, who was the highest bidder, for the sum of Seventeen thousand three hundred forty 50/100 Dollars,

lawful money of the United States, which was the whole price paid by him for the same, the real estate particularly described as follows, to-wit:

PARCEL NO. 1.

In the County of Ventura, State of California:

The West half of Lot No. 6 and Lots numbered 7 and 9 of Section 1, Township 4 North, Range 20 West, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in Lot 9, Section 1 in Township 4 North, Range 20 West, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the Northwest corner of the Kentucky Oil Claim as said claim is described in that patent executed by the United States Government to J. S. Crawford, and Jos. F. Dye, February 1, 1898, and recorded in Book 2, page 336, of Patents, Records of Ventura County, thence

1st: East five (5) chains along the north line of said Kentucky Oil Claim; thence

2nd: North at right angles three (3) chains; thence

3rd: North Sixty (60 degrees) degrees West four (4) chains; thence

4th: South fifty-six and one-half ($56\frac{1}{2}$) degrees west to a point four (4) chains North of the center of said section 1, Township 4 North, Range 20 West, which point is also the Northwest corner of the Southeast quarter of said section 1; thence

5th: South four (4) chains along the west line of said S. E. quarter of said section 1;

6th: East at right angles 5.95 chains to the west line of said Kentuck Oil Claim; thence,

7th: North along the West line of said Kentuck Oil Claim to place of beginning, containing 9 acres more or less;

PARCEL NO. 2.

All the right, title and interest of the defendant, Pacific Crude Oil Company, subject only to paramount title of the United States, of, in and to the following, described placer mining claims, situate, lying and being in the said County of Ventura, State of California, and particularly described as follows:

The New York Oil and Placer mining claims located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in Book 2, page 245, of Mines, Records of Ventura County and included in the location of the "Nellie Belle" Placer Mining Claim hereafter referred to.

PARCEL NO. 3.

Also all that part of the Henry Gage Placer mining claim not included in Lot 7, Section 1, Township 4 North, Range 20 West, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in Book 3, Page 154 of Mines, records of Ventura County.

PARCEL NO. 4.

Also the Elwood Placer mining claim located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clam-

pett, and E. F. Kendall, and recorded in Book 19, page 315 of mines, Records of Ventura County.

PARCEL NO. 5.

Also the "Nellie Belle" placer mining claim, located by T. M. Hornada, E. F. Coldwell, and J. A. Clampett, April 1, 1910, and recorded in Book 19, at page 315 of Mines, records of Ventura County.

And I further certify that I offered the aforesaid described real property in five lots or parcels.

Parcel No. 1.	sold for	\$3,000.00
" " 2 " "	\$	300.00
" " 3 " "	\$	200.00
" " 4 " "	\$2,000.00	
" " 5 " "	\$11,840.50	

And that the said real estate is subject to redemption in lawful money of the United States, pursuant to the Statutes in such cases made and provided.

GIVEN under my hand this 3rd day of March, A. D. 1917.

E. G. McMARTIN, *Sheriff*.

By R. N. HAYDON, *Under Sheriff*.

Recorded at Request of E. G. McMartin Mar 14 1917 at 45 min. past 1 o'clock P. M. J. L. Argabrite, County Recorder; by E. W. Argabrite, Deputy Recorder.

STATE OF CALIFORNIA)
COUNTY OF VENTURA) SS.

I, J. L. ARGABRITE, County Recorder in and for said County hereby certify that the annexed is a full,

true and correct copy of the instrument as recorded in book 4 of CERTIFICATES OF SALE at page 75.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal this 26th day of March, A. D. 1920.

(SEAL)

J. L. ARGABRITE,

County Recorder.

By.....

Deputy Recorder.

No. E 26—Eq. Cochran vs. Big Sespe Oil Co. Pltff's EXHIBIT No. 4. Filed 6 April 1920. CHAS. N. WILLIAMS, Clerk; by Ernest J. Morgan, Deputy Clerk.

Plaintiff's Exhibit No. 5.

THIS INDENTURE, Made the 30th day of March, in the year of our Lord one thousand nine hundred and fourteen, By and between Big Sespe Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California, the party of the first part, and William H. Cochran, Trustee for the Pacific Crude Oil Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware, the party of the second part;

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar and certain other good and valuable consideration to it in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, and the receipt whereof is hereby acknowledged,

has granted, bargained and sold, and does by these presents grant, bargain, and sell, convey and confirm unto the said party of the second part, and unto his successors and assigns forever, all that certain real and personal property situate, lying and being in the County of Ventura, State of California, and bounded and particularly described as follows, to-wit:

The West half of Lot number six and lots numbered seven and nine of Section one in Township 4 North, Range 20 West, of San Bernardino Meridian in California, containing eighty-one and seven hundredths of an acre.

Excepting therefrom the following described parcel of land situate in Lot 9 Section one, in Township 4 North, Range 20, West, of San Bernardino Meridian, County of Ventura, and State of California, described as follows:-

Commencing at the Northwest corner of the Kentucky Oil Claim as said claim is described in that patent executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898, and recorded in Book 2 Page 336 of Patents, Records of Ventura County, thence

1st—East five chains along the North line of said Kentucky Oil Claim, thence

2nd—North at right angles three chains, thence

3rd—North 60° West four chains; thence

4th—South $56\frac{1}{2}^{\circ}$ West to a point four chains North of the center of said Section 1 Town. 4 North, Range 20 West, which point is also the Northwest corner of the Southeast quarter of said Section 1; thence

5th—South, four chains along the West line of said S. E. $\frac{1}{4}$ of said Section 1,

6th—East at right angles 5.95 chains to the West line of said Kentuck Oil Claim; thence

7th—North along the West line of said Kentuck Oil Claim to place of beginning, containing nine acres more or less.

And also all and every the personal property in, on or about the said premises, and more particularly described in the "Schedule of Personal Property" hereunto annexed, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the above mentioned and described premises and personal property, together with the appurtenances unto the said party of the second part, and unto his successors and assigns, forever, free and clear of any lien or encumbrance of any kind or description whatsoever, excepting, however, (1) a certain agreement to convey executed by the Big Sespe Oil Company, a corporation, to S. L. Bean dated July 27, 1910, and recorded in Book 129, page 388 of Deeds records of Ventura County, and (2) a certain agreement to convey executed by the Big Sespe Oil Company, a corporation, L. A. Clampitt, Dr. I. D. Mills and T. M. Hornada, to the Overland Oil Company, a corporation, dated the
and recorded in

Book

Page

of Deeds records of

Ventura County, and as to each and both of said agreements the party of the first part covenants and agrees that the same are null, void, of no force nor effect, nor any lien on the property hereby conveyed; and further, that, within sixty (60) days from the date hereof, it will cause such agreements to be released and discharged of record, or in the event of its failure so to do will within such time, and in its own name, institute such action or proceeding, at its own cost and expense, as may be necessary to have the same so released and discharged of record. And the said party of the first part and its successors shall and will warrant, and by these presents forever defend the said premises, in the quiet and peaceable possession of the said party of the second part, his successors and assigns, against the said party of the first part and its successors, and against all and every person and persons whomsoever, lawfully claiming or to claim the same.

IN WITNESS WHEREOF, the said party of the first part has caused these presents to be executed in its corporate name, and its corporate seal to be hereunto attached, by its President and its Secretary, the day and year first herein above written.

BIG SESPE OIL CO.

By President

L. A. CLAMPITT

President

Attested

Dr. I. D. MILLS, *Secy*

(SEAL)

State of California)
) SS.
 County of Los Angeles,)

On this 30th day of March, in the year, nineteen hundred and fourteen, A. D., before me, MIRANDA W. OLDS, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally (SEAL) appeared L. A. Clampitt, known to me to be the President, and Dr. I. D. Mills, known to me to be the Secretary of Big Sespe Oil Co. the Corporation which executed the within and annexed instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

MIRANDA W. OLDS,

*Notary Public in and for Los Angeles County,
 State of California.*

My Commission Expires Oct. 21, 1915.

Schedule of the personal property now on the property of the BIG SESPE OIL COMPANY, referred to in the within contract.

¾ mile Pipe line (oil)

½ mile Gas pipe line

Water line

2 water tanks

4 room camp house

1 Bunk house

2—300 barrel oil tanks

1 Engine House

1 pumping plant

1 gas engine 15 horse power

2 Boilers

2 steam engines

2 drilling rigs, with bits, etc. etc.

$\frac{7}{8}$ wire drilling line

$\frac{5}{8}$ sand line

Tools of different kinds

House and bunk house equipped with water and gas
Blacksmith shop, with tools, etc.

(Endorsed)

FILED SEP 7—1916 J. B. McCLOSKEY. CLERK
By Stephen A. Gavin Deputy Clerk.

RECORDED AT THE REQUEST OF Grantee
APR 1 1914 At 30 min. past 4 o'clock P. M., in Book
142 of Deeds Page 239 Records of Ventura Co., Cal—
J. L. Argabrite County Recorder By.....
Deputy Recorder \$1.50

No. E-26—Eq. Cochran vs Big Sespe Oil Co.—
Pltffs EXHIBIT No. 5 Filed 6 April 1920 CHAS. N.
WILLIAMS, Clerk By Ernest J. Morgan Deputy
Clerk.

Plaintiff's Exhibit No. 6.

THIS INDENTURE, made this 30th day of March,
in the year of our Lord one thousand nine hundred
and fourteen, by and between BIG SESPE OIL COM-
PANY, a corporation organized and existing under

and by virtue of the laws of the State of California, the party of the first part, and WILLIAM H. COCHRAN, Trustee for the Pacific Crude Oil Company, a corporation organized and existing under and by virtue of the Laws of the State of Delaware, the party of the second part;

WITNESSETH: That the said party of the first part, for and in consideration of the sum of One Dollar (\$1.00) and certain other good and valuable consideration to it in hand paid at and before the sealing and delivery of these presents, by the party of the second part, and the receipt whereof is hereby acknowledged, has remised, released and forever quitclaimed, and by these presents does remise, release and forever quitclaim unto the said party of the second part and unto his successors and assigns, all that certain real and personal property, situate, lying and being in the County of Ventura, State of California, and bounded and described as follows, to-wit:

Beginning at a point on range line between Section 6, Town 4 North, Range 19 West, and Section 1, Town 4 North, Range 20 West, 13.77 chains East of the Northeast corner of the Kentuck Oil Claim as said claim is described in that certain patent executed by the United States of America, to J. S. Crawford and Jos. F. Dye, February 1st, 1898 and recorded in Book 2, Page 336 of Patents, Records of Ventura County, and the Southeast corner of fractional Lot 7 of said Section 1 Town 4 North, Range 20 West, S. B. B. M., thence

East 10.30 chains to a point in the West line of the Hawk Wing Mining Claim; thence North along the West line of the Hawk Wing Mining Claim to the Northwest corner thereof, thence; East 10 chains to the Northeast corner of said Hawk Wing Mining Claim; thence

At right angles North to the South line of the Spring Valley Extension Mining Claim; thence

At right angles West along the South line of the Spring Valley Extension Mining Claim to the Southwest corner thereof, thence

North along the West line of said Spring Valley Extension Mining Claim and the East Line of Lot No. 6 of Section 6, Township 4 North, Range 19 West, to a point 23.63 chains North of the Southwest corner of said Spring Valley Extension Claim, thence at right angles West to the Range line between Lot 1, of Section 1, Town 4 North, Range 20 West, and Lot 6 of Section 6, Town 4 North, Range 19 West, S. B. B. M., thence

North along said Range line to the Town line between Towns 4 and 5 North, Range 20 West, S. B. B. M., thence

Along said Town line West (which is also the North line of said Lot 1, Section 6, Town 4 North, Range 20 West) to the Northwest corner of said Lot 1, thence

South along the quarter section line between Lots 1 and 2 and the West line of the Northeast quarter of the Northeast quarter of said Section 1, Town 4 North, Range 20 West, S. B. B. M., and along the

West line of the "Henry Gage Placer Mining Claim" as described in Book 3 Page 154 of Mines, Records of Ventura County to the Northwest corner of Lot 7 which is the Northwest corner of the Southeast quarter of the Northeast quarter of Section 1 in Town 4 North, Range 20 West, thence

East along the North line of the Southeast quarter of the Northeast quarter of Section 1, in Town 4 North, Range 20 West, S. B. B. M. to the Northeast corner thereof; thence South to the place of beginning, containing 154 acres, more or less.

And also all and every the personal property in, on or about the said premises, and more particularly described in the "Schedule of Personal Property," hereunto annexed, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest, property possession, claim and demand whatsoever, as well in law as in equity, of the said party of the first part, of, in or to the said premises, and every part and parcel thereof with the appurtenances.

TO HAVE AND TO HOLD, all and singular the said premises and personal property, together with the appurtenances unto the said party of the second part, and his successors and assigns forever, free and clear of any lien or encumbrance of any kind or description whatsoever, excepting, however, (1) a certain agreement to convey executed by the Big Sespe Oil Com-

STATE OF CALIFORNIA,)
County of Los Angeles,) ss.

On this 30th day of March, in the year nineteen hundred and fourteen, A. D., before me, Miranda W. Olds, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared L. A. Clampitt, known to me to be the President, and Dr. I. D. Mills, known to me to be the Secretary of Big Sespe Oil Co., the Corporation which executed the within and annexed instrument, and acknowledged to me that such Corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in said county the day and year in this certificate first above written.

MIRANDA W. OLDS.

*Notary Public in and for Los Angeles County,
State of California.*

My Commission Expires Oct. 21, 1915.

(Corporation—Pres. & Sec.)

Los Angeles Rubber Stamp Co.,

131 South Spring St.

(SEAL)

Schedule of the personal property now on the property of the BIG SESPE OIL COMPANY, referred to in the within contract.

3/4 mile Pipe line (oil)

1½ mile Gas pipe line.

Water line

2 water tanks
4 room camp house
1 Bunk house
2—300 barrel oil tanks
1 Engine House
1 pumping plant
1 gas engine 15 horse power
2 Boilers
2. steam engines
2 drilling rigs, with bits, etc. etc.
 $\frac{7}{8}$ wire drilling line
 $\frac{5}{8}$ sand line
Tools of different kinds
House and bunk house equipped with water and gas
Blacksmith shop, with tools, etc.

(Endorsed on back:)

Filed Sep. 7, 1916

J. B. McCLOSKEY, Clerk.

By

Stephen A. Gavin

Deputy Clerk.

RECORDED AT THE REQUEST OF Grantee

Apr 1, 1914

At 35 min. past 4 o'clock P. M., in Book 142 of Deeds,
Page 241, Records of Ventura Co., Cal.

J. L. ARGABRITE,

County Recorder.

By

Deputy Recorder.

\$1.60

No. E-26—Eq. Cochran vs. Big Sespe Oil Co.
PLFF'S EXHIBIT NO. 6. Filed 6 April 1920.
CHAS. N. WILLIAMS, Clerk. By Ernest J. Morgan,
Deputy Clerk.

Plaintiff's Exhibit No. 8.

WHEREAS, under and pursuant to the certain writ of execution issued to him out of the Superior Court of the County of Ventura, State of California, dated the Second day of February, 1917, and upon the certain judgment theretofore given, made and entered in the said Court, in favor of Big Sespe Oil Company, a corporation, and against Pacific Crude Oil Company, a corporation, the sheriff of the aforementioned County of Ventura, State of California, did, on the Third day of March, 1917, sell at public auction, all the certain estate, right, title and interest of the said judgment debtor, Pacific Crude Oil Company, a corporation, of, in, and to the certain real property hereinafter more particularly referred to, and described; and

WHEREAS, under and pursuant to the laws and statutes of the said State of California, in such cases made and provided for, the said judgment debtor, Pacific Crude Oil Company, ever since such aforementioned sale has had, and still has the legal and statutory right, and still is entitled to redeem the aforementioned real property from the aforesaid sale thereof under execution, and to make such redemption in the form and in the manner likewise required and provided for by the said laws and statutes of the said State of California;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that Pacific Crude Oil Company, a corporation formed, organized and existing under and by virtue of the laws of the State of Delaware, and also being the certain hereinbefore mentioned judgment debtor, for, and in consideration of the sum of One Dollar, and certain other good and valuable consideration to it in hand paid and delivered by William H. Cochran, of the City and State of New York, at and before the sealing and delivery of these presents, and the receipt and delivery whereof is hereby acknowledged, has granted, bargained, sold, assigned, transferred, set over and conveyed, and by these presents does grant, bargain, sell, assign, transfer, set over and convey unto the said William H. Cochran, all and every the certain hereinbefore mentioned redemption, and right of redemption, which it, the said Pacific Crude Oil Company, ever had, now has, or hereafter may have to redeem the certain hereinbefore mentioned and hereinafter particularly described real property, from the certain aforementioned sale thereof, under execution, on March 3, 1917; and also all and every right, title, interest, benefit and advantage under and because of the said right of redemption; and also every power and authority in connection therewith, including any and all rights of action and proceedings to make and enforce such redemption. It being the intent and purpose of the said Pacific Crude Oil Company, by this instrument, to absolutely and fully assign and transfer unto the said William H. Cochran, not alone its aforementioned

certain right of redemption, but also every right, power and authority, either at law, or in equity, in any way connected therewith so that the said William H. Cochran may as fully and completely make and enforce such redemption as this Company might, and could do, if this sale and assignment had not been made, and as if this Company was personally present. TO HAVE AND TO HOLD to the said William H. Cochran, his executors, administrators, and assigns from henceforth, and to his own proper use, benefit and behoof forever.

The certain hereinbefore mentioned real property is situate, lying and being in the aforementioned County of Ventura, State of California, and is bounded and described as follows, to-wit:

The west half of lot No. 6 and lots numbered 7 and 9 of Section 1 in Township 4 north, range 20 west, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in lot 9, section 1 in Township 4 north, range 20 west, of San Bernardino Meridian, County of Ventura, State of California, described as follows:

Commencing at the northwest corner of the Kentuck Oil claim as said claim is described in that patent executed by the United States Government to J. S. Crawford and Jos. F. Dye, February 1, 1898, and recorded in Book 2, page 336, of Patents, records of Ventura County; thence

1st. East Five (5) chains along the north line of said Kentuck Oil claim; thence

2nd. North at right angles Three (3) chains; thence

3rd. North Sixty (60°) degrees west 4 chains; thence

4th. South $56\frac{1}{2}^{\circ}$ west to a point 4 chains north of the center of said section 1, township 4 north, range 20 west, which point is also the northwest corner of the southeast quarter of said section 1; thence

5th. South 4 chains along the west line of said S. E. quarter of said section 1; thence

6th. East at right angles 5.95 chains to the west line of said Kentuck Oil claim; thence

7th. North along the west line of said Kentuck Oil claim to place of beginning, containing 9 acres more or less;

The New York Oil and Placer mining claims, located by O. P. Clark and Lee C. Gates, January 27, 1894 and recorded in Book 2, page 245 of Mines, Records of Ventura County, and included in the location of the "Nellie Belle" placer mining claim hereafter referred to.

Also all that part of the Henry Gage Placer mining claim not included in lot 7, section 1, township 4 north, range 20 west, S. B. M., located by Henry T. Gage, December 22, 1890, and recorded in Book 3, page 154 of Mines, records of Ventura County.

Also the Elwood Placer mining claim located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in Book 19, page 315 of Mines, Records of Ventura County.

Also the "Nellie Belle" placer mining claim located by T. M. Hornada, E. F. Coldwell and J. A. Clampitt.

April 1, 1910, and recorded in Book 19, at page 315 of Mines, Records of Ventura County.

IN WITNESS WHEREOF, the said PACIFIC CRUDE OIL COMPANY, a corporation, has, on the Eleventh day of June, A. D., 1919, caused these presents to be executed by its President, and its corporate seal to be hereunto affixed, duly attested by its Secretary, and all by order of its Board of Directors.

PACIFIC CRUDE OIL COMPANY,

By:- GEORGE VAN HOOK POTTER,

President.

ATTEST:

By:- C. C. DuPLAINE

Secretary

(SEAL)

STATE OF PENNSYLVANIA,)
CITY AND COUNTY OF PHILADELPHIA,) SS:

Be it remembered, that on the Eleventh day of June, A. D., 1919, before me, the subscriber, a Notary Public in and for the State of Pennsylvania, residing in the City and County of Philadelphia, personally appeared C. C. DuPLAINE, who being duly sworn, deposes and says; that he was personally present and did see the common or corporate seal of the above named PACIFIC CRUDE OIL COMPANY, affixed to the foregoing instrument; that the seal so affixed is the common or corporate seal of the said PACIFIC CRUDE OIL COMPANY, and was so affixed by the authority of the said corporation as the act and deed thereof;

that the above named GEORGE VANHOOK POTTER is the President of the said corporation, and did sign the said instrument as such in the presence of deponent; that deponent is the Secretary of the said corporation and that the name of deponent above signed in attestation of the due execution of the said instrument is in deponent's own proper handwriting.

C. C. DuPLAINE.

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 11TH DAY OF JUNE, A. D., 1919.

(SEAL) GEORGE KOPPENHOFER, JR.

Notary Public.

328 Chestnut St., Phila, Pa.

My Commission expires March 10, 1921.

39520

IN THE COURTS OF COMMON PLEAS OF
PHILADELPHIA COUNTY.

Acknowledgment (Notary).

STATE OF PENNSYLVANIA,)

County of Philadelphia, ss.)

I, HENRY F. WALTON, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following Certificate, do Certify, That

George Koppenhoefer, Jr., Esquire, whose name is subscribed to the certificate of the acknowledgment of the annexed Instrument and thereon written, was at

the time of such acknowledgment a NOTARY PUBLIC for the Commonwealth of Pennsylvania, residing in the County aforesaid, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said NOTARY PUBLIC and verily believe his signature thereto is genuine, and I further certify that the said Instrument is executed and acknowledged in conformity with the laws of the State of Pennsylvania.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, this 23rd day of JUNE in the year of our Lord one thousand nine hundred and NINETEEN (1919).

(Seal)

HENRY F. WALTON,

By MEREDITH HANNA, *Dep. Prothonotary,*
Prothonotary.

Durante Absentia, Secundum Legem.

(Endorsed)

No. E. 26—Eq. Cochran vs Big Sespe Oil Co. Plff's EXHIBIT No. 8. Filed 4/6/20 6 Apl 1920. CHAS. N. WILLIAMS, Clerk. By Ernest J. Morgan, Deputy Clerk.

Plaintiff's Exhibit No. 9.

Mr. Cochran: I called at 10 A. M. this 21st. Will be in city most of to-day. I will be at Clampitt's office

576 *Big Sespe Oil Company, a Corp., vs.*

from 11 to 12. If you will call I will meete you—
Broadway 1222. Dr. Mills. over. I want Hornada to
look over our books. I meete him at 11 A. M. Maybe
longer than 12. You can get me by 'phone.

Rec'd 1/21/18.

No. E-26 Eq.

Cochran vs. Big Sespe Oil Co.,

Plaintiff's Exhibit No. 9.

Filed 7th April, 1920.

CHAS. N. WILLIAMS, Clerk.

By Ernest J. Morgan, Deputy Clerk.

Memorandum

Dr Mills to Mr

Cochran 1/21/18

Plaintiff's Exhibit No. 10.

Jan. 21, 1918.

Dr. I. D. Mills,
Santa Ana, California.

My dear Dr. Mills:

After thinking over our telephone conversation of
this afternoon, I think it best to write you on the sub-
ject of our conversation, so that hereafter there may
be no question between us about the same.

At the time of our personal interview on the 15th
inst., and at which time you rejected any proposed
adjustment of matters between the Big Sespe Oil Com-
pany, and my clients, Pacific Crude Oil Company, I
asked that you would furnish me, at the very earliest

possible day, with a written statement of just what income the Big Sespe Oil Company had received from the property commonly known as the Big Sespe Oil Company property, and also what disbursements had been made in connection with such operation, and exactly what sums this Company claims were due from myself, as trustee for Pacific Crude Oil Co., in order to redeem this property under the sale which was made to your Company in March, 1917. Although I endeavored to impress upon you the importance of having these figures at the earliest possible date, I have heard nothing from you until the receipt of your memoranda at the hotel about 1:30 this afternoon, when I immediately called you upon the phone at Clampitt's office. As it would appear from what you said at this telephone interview of this afternoon, that there is considerable doubt as to when I may look to the receipt of this requested financial statement, I write you to say that it is imperative that I should have the same without any further delay. As you are well aware, the time within which I must redeem this property is daily growing seriously short; and it is not right nor fair that I should not be exactly advised by you of what amount you claim is necessary to make such redemption. Such a statement as I have requested is certainly not one that takes any particular length of time to prepare. I simply want an itemized monthly statement of what income your Company has received from this property, what its monthly operating expenses were (subdividing this item into salary, repairs and improve-

ments) and such other items as your company may claim should be paid to them on the property's redemption. If you will furnish me with the figures thus requested, it will not be difficult for us to arrive at some adjustment of the matter. I must, however, ask that you furnish me with this written statement without further delay.

With kind regards,

Very truly yours,

No. E-26—Eq.

Cochran vs Big Sespe Oil Company

Plaintiff's Exhibit No. 10.

Filed 7th Apl, 1920,

CHAS. N. WILLIAMS, Clerk,

By Ernest J. Morgan, Deputy Clerk.

Plaintiff's Exhibit No. 11.

Dr. I. D. Mills

Theo. A. Winbigler
Coroner

Phones: Pacific 60-W Home 60

MILLS & WINBIGLER

Undertakers and
Embalmers

609 No. Main Street
Santa Ana, Cal.

Jan. 25th, 1918.

W. H. Cochran,
Los Angeles, Cal.

My Dear Sir:

In consulting with Clampitts and Hornada, they directed me as Secretary of the Big Sespe Oil Com-

pany to refer you to our Attorney, Mr. Cates, for any and all information you may want.

Yours truly,

DR. I. D. MILLS.

No. E-26—Eq.

Cochran vs Big Sespe Oil Co.

Pltffs Exhibit No. 11

Filed 7th Apl, 1920

CHAS. N. WILLIAMS, Clerk

By Ernest J. Morgan, Deputy Clerk.

Plaintiff's Exhibit No. 12.

Jan. 28, 1918.

Alton M. Cates, Esq.,
Washington Building,
Spring and Third Streets,
Los Angeles, Cal.

My dear Sir:

Both verbally and in writing I have heretofore requested from your clients, Big Sespe Oil Co., a statement as to the exact amount which they claim is necessary to redeem the property, which as you know they bought in on or about March 3rd, 1917, under the execution sale in the action brought by that Company against myself, as trustee of Pacific Crude Oil Co., et al. As this statement has been several times promised to me by the Company's Secretary, Dr. I. D. Mills, I am more than surprised to now receive a letter from him that I should take up the matter of this requested statement with you, as the Company's Attorney.

Ordinarily, there would not be the slightest difficulty in computing the amount necessary to redeem this property as the statutes are very precise on this subject but under existing conditions, I am unable to determine what amount is due Big Sespe Oil Company in order to redeem the property in question, because your clients have taken on themselves the possession and operation of the property and the collection (under bond) of the income therefrom, and also because Dr. Mills has advised me that there are certain uncertain items—claimed to have been expended by his Company—which also should be considered in making up the amount necessary for me to pay to redeem. Generally, these are my necessary reasons for requesting the statement which I did from Dr. Mills and which I now repeat and renew to you, as attorney for the Big Sespe Oil Company.

In order that there may be no question about my request, I hereby demand from your clients, Big Sespe Oil Co., a full and complete detailed and itemized statement of all moneys which they have received from their operation of the property in question, also of disbursements in connection with such operation, and also of any other amounts which your clients claim should be paid to them on the property's redemption, such as has been suggested by Dr. Mills should be paid.

Aside from the fairness which your clients should have shown in furnishing me with these requested figures, I am sure that you, as their Attorney, will agree that I am entitled to have this more formal demand—which they have forced from me—fully satisfied.

As the time within which this property must be redeemed is now very short, I would and in fact must insist that the requested statement be forwarded to me without any further delay. Anticipating your prompt attention, I remain,

Very truly yours,

No. E-26—Eq.

Cochran vs. Big Sespe Oil Co.,

Plaintiff's Exhibit No. 12

Filed 7 April, 1920

CHAS. N. WILLIAMS, Clerk

By Ernest J. Morgan, Deputy Clerk.

Plaintiff's Exhibit No. 13.

Dudley W. Robinson

Alton M. Cates

CATES AND ROBINSON

Attorneys

Suite 701 Washington Building

Los Angeles, California

January 29, 1918.

Mr. William H. Cochran,

Angelus Hotel,

Fourth and Spring Streets,

Los Angeles, California.

Big Sespe Oil Company

vs

Cochran.

Dear Sir:

In am this morning in receipt of your letter of the 28th instant relative to the above matter.

I do not understand that you occupy either the position of judgment debtor or redemptioner, and therefore, under the provisions of Section 707 of our Code of Civil Procedure, you are not entitled to the statement provided for in that Section.

If you will furnish me with satisfactory evidence that you are entitled to redeem the real property, there being no redemption from sale of the personal property, I shall be pleased to furnish you with the necessary data.

Yours very truly,

AMC/C

Alton M. Cates.

E-26—Eq.

Cochran vs Big Sespe Oil Co.

Pltffs Exhibit No. 13.

Filed 7 April 1920

CHAS N. WILLIAMS, Clerk,

By Ernest J. Morgan, Deputy Clerk.

Defendant's Exhibit A.

March 30, 1918.

Hon. Merle J. Rogers,

Court House,

Ventura, California.

My dear Sir:

This (Saturday) afternoon I, informally and also through the courtesy of the Sheriff of your County of Ventura, learned that a motion is returnable before

your honor on Monday next, April 1st, for a writ of mandate against this Sheriff for the delivery by him of the deed of the property hereinafter referred to.

On, or about, January 3rd, 1917, a judgment was rendered in your Court, in favor of the plaintiff in the certain action of Big Sespe Oil Company against Pacific Crude Oil Company for the sum of \$15,000.00 with certain interest and costs. Pursuant to this judgment an execution was subsequently issued, and certain real property in Ventura County was sold in the attempted satisfaction of the same on, or about March 3d, 1917, with the usual conditions and provisos for redemption within one year.

On the sale of this real property the Big Sespe Oil Company bid in the same using its before mentioned judgment on account of its bid in lieu of cash. Subsequently, this Company illegally and improperly entered into the occupation of the property referred to and since then has been continuously receiving regularly a monthly and substantial amount from the sale of the oil produced therefrom, and which at the present time amounts to several thousand dollars which unquestionably should be applied on account of the judgment referred to.

The amount which should be thus credited on account of its judgment, was several times requested by me, as Attorney for Pacific Crude Oil Company and uniformly promised to me. When I repeatedly found that this promised statement was being delayed unnecessarily, on March 1st, 1917, I made a written

formal demand on the Big Sespe Oil Company under the provisions of Section 707 of the California Code of Civil Procedure for "A written and verified statement of the amounts of the rents and profits" thus received by the said Company. This notice of demand was formally served on the said Big Sespe Oil Company either on March 1st or 2nd, the date of which service depends entirely upon the construction which your law places on service of papers of this character. But in either event such service was made prior to the expiration of the year within which the property could be redeemed from the above mentioned execution sale. A copy of this notice of demand for an accounting was also sent to the Sheriff of Ventura County on March 1st, 1918, with a further notice that he should not deliver any deed of the property in question until legally and properly advised that the demand referred to had been fully satisfied by the Big Sespe Oil Company.

Although this notice of demand for a statement of the moneys received by the Big Sespe Oil Company has been in no way satisfied, this Company apparently, as I now am advised at this last moment, is attempting to procure from your honorable court a mandate on the Sheriff to execute a deed of the real property in question.

I am not sufficiently informed as to the character of the mandate now moved for, and therefore cannot discuss the same. I am, however, strenuously objecting to the character of any proceeding which may be brought

against a public official to deliver a deed of real property, in which he has no personal interest, but is purely an official, without notice to the real parties in interest, to wit; the persons in whom the legal title to the property is vested, and who have the legal right of redemption of the same under an execution sale, particularly after notice of such legal title and right of redemption has been given to the Sheriff against whom the mandate proposed is to be issued.

Summarizing the situation it is beyond question of any possible legal or equitable dispute that the right of redemption of the property referred to existed under the above mentioned execution sale, and that such redemption was attempted to be made, and was prevented solely by the arbitrary neglect and refusal of Big Sespe Oil Company to furnish the statement required by Section 707 of the California Code of Civil Procedure, of the amounts which should be credited on this judgment for reasons above set forth, under the provisions of the last mentioned Section of the Code of Civil Procedure. It is not possible for any action to be brought for an accounting of the moneys thus collected by the Big Sespe Oil Company until after the expiration of one month from and after the demand for a statement of its profits during the past year from this property. This month has not yet expired, and will not do so for several days yet to come, and in the mean time it is impossible to bring any proceedings against it either for the requested statement of account, or to redeem the property by any

tender inasmuch as it is impossible to determine the amount of tender which should be made until this statement is furnished.

The attempt, therefore, by the Big Sespe Oil Co., to procure a mandate on the Sheriff of your County, a purely public official, to procure complete title to the property, which we are trying legally to redeem, but which redemption is prevented solely by the arbitrary refusal of the judgment creditor to furnish us with a statement of the moneys which it has unlawfully collected from the property in the past year, is beyond criticism, let alone assumption that it would be granted by any Court of Law or Equity, particularly considering that no notice of the requested mandate has been served on Pacific Crude Oil Company against whom the judgment was granted or myself as trustee of that Company.

I trust that your honor will appreciate the delicacy of my position when I write you as I do rather than appearing in open court on the return of this motion on April 1st. In my representative capacity, I do not feel justified in appearing in open court on this motion because such motion might appear to give jurisdiction which at this moment I cannot do.

I take the liberty of suggesting purely as *amicus curia* that formal legal notice of the above mentioned notice for a mandate should be served on the several parties of interest in the property referred to.

I might also add that in order not to embarrass the sheriff, who of course, has no personal interest in this

situation, I have talked with him over the telephone today, and also with his attorneys, Messrs. Bowker and Sheridan, and am also sending to these Attorneys a copy of this letter, in order that they may properly protect the Sheriff's position in the matter. I trust that you will appreciate my attitude in sending copy of this letter to Messrs. Bowker & Sheridan, and that you will not consider it in any way disrespectful to yourself. Trusting that this entire matter may be put over until such a time as the real parties in interest may be given an opportunity to be heard, I remain,

Very respectfully yours,

THE ANGELUS HOTEL

Fourth and Spring St.

Fine Sample Rooms

F. W. Paget,

Manager

Los Angeles, March 30, 1918.

Messrs. Bowker & Sheridan,

Ventura, Cal.

My dear Sirs:

Following my conversation this afternoon with your Mr. Sheridan, over the telephone, I send you enclosed herewith a copy of the letter which I advised Mr. Sheridan I was going to send to Judge Rogers, in connection with the motion for a writ of mandate by Big Sespe Oil Company, which is returnable on Monday next, April 1st.

I do not see that there is anything I can add to the conversation of Mr. Sheridan and myself, which is

not included and covered in this letter to Judge Rogers. I can only again emphasize what I understood Mr. Sheridan to agree to, and that is that it seems almost incredible that a motion of this character, and under all existing legal conditions could be granted without formal notice to the real parties interested in the property in question.

I want to thank your Mr. Sheridan, and through him your client, the Sheriff of Ventura County, for the courtesy which they have shown me today, and which, I assure you is greatly appreciated.

I will be obliged if you will kindly advise me promptly as to just what happens on the return of this motion, (for I certainly will not appear at its hearing), so that I may know just what is being done. (While not living at the above address, you might send me any letter there, as I receive mail there much more promptly than at my home, for as you are already advised I do not maintain any office out here, although we have several attorneys, including Mr. Theodore Martin, whom I mentioned to you today, who represent us, but it was not advisable to have him appear in this proceeding formally.

Again thanking you for your kind attention, I remain,

Very truly yours,

Wm. H. Cochran.

No. E-26—Eq.

Cochran vs Big Sespe Oil Co.,

Deft. Exhibit No. A,

Filed April 6th, 1920.

CHAS. N. WILLIAMS,

Clerk

By Ernest J Morgan

Deputy Clerk.

Defendants Exhibit No. B.

THE ANGELUS HOTEL

Fourth and Spring St.

Fine Sample Rooms

F. W. Paget,

Manager

Los Angeles, April 19, 1918.

Hon. Don G. Bowker,

County Court House,

Ventura, Cal.

Big Sespe Oil Company

-vs-

Sheriff, etc.

Dear Mr. Bowker:

Following your suggestion, at the conclusion of the argument on Tuesday last in the above entitled proceeding, I am sending you inclosed herewith my views of the proposed "Memoranda for Respondent" therein. I trust that it may prove of service to you.

I will be greatly obliged if you will advise me immediately of such decision as may be made in this proceeding, sending me also a copy of any opinion which may be filed therein, and also giving me an opportunity to suggest my views of any proposed order that may be submitted thereon.

Thanking you for your past courtesies, which I assure you are greatly appreciated, I remain,

Very truly yours,

Wm. H. Cochran.

No. E-36—Eq.

Cochran vs Big Sespe Oil Co.,

Deft. Exhibit No. B.

Filed 6th April, 1920

CHAS. N. WILLIAMS, Clerk.

By Ernest J. Morgan, Deputy Clerk.

Defendant's Exhibit No. C.

THE ANGELUS HOTEL

Fourth and Spring St.

Fine sample rooms.

F. W. Paget

Manager Los Angeles, Cal., May 28, 1918.

Hon. Don G. Bowker,

County Court House,

Ventura, California.

Big Sespe Oil Co.

VS

McMartin, as Sheriff, etc.

My dear Sir:

Some time ago you advised me over the telephone that the above entitled proceeding had been dismissed.

In order that my files may be complete, I will greatly appreciate it if you will furnish me with a copy of the dismissal order, and also of any memoranda or opinion

that Judge Rogers may have filed in connection therewith.

If there has been anything further done in the matter kindly advise me. Thanking you for your attention, I remain,

Very truly yours,

Wm. H. Cochran.

No. E-26—Eq.

Cochran -vs- Big Sespe Oil Co.,

Deft. Exhibit No. C.

Filed 6th April, 1920.

CHAS. N. WILLIAMS, Clerk

By Ernest J. Morgan,

Deputy Clerk.

Defendant's Exhibit No. D.

June 1, 1918.

Mr. William H. Cochran

c/o The Angelus Hotel,

Los Angeles, California.

Dear Sir:

I beg to advise you that judgment in the case of Big Sespe Oil Company vs. McMartin was for the defendant in that Judge Rogers refused to issue the Writ of Mandate, and I don't think there was any memorandum of opinion made.

The Big Sespe Oil Company is now demanding a deed and I would be pleased if you could advise me or the sheriff whether you propose bringing an action to compel an accounting with the Big Sespe Oil Company or not. The Sheriff's position is rather difficult, and

all that I desire to do is to advise him his correct duty in this matter.

Yours very truly,

DGB/D

District Attorney.

No. E-26—Eq.

Cochran vs Big Sespe Oil Co.

Deft. Exhibit No. D.

Filed 6th April, 1920.

CHAS. N. WILLIAMS, Clerk

By Ernest J. Morgan, Deputy Clerk.

Defendant's Exhibit No. E.

THE ANGELUS HOTEL

Fourth and Spring St.

Fine sample rooms.

F. W. Paget,

Manager

Los Angeles, June 6, 1918.

Hon. Don G. Bowker,

County Court House,

Ventura, California.

My dear Sir:

Replying to yours of the first inst., I would say that it was the positive intention to bring suit against the Big Sespe Oil Company for the accounting under Section 707 of the Code of Civil Procedure referred to in your letter.

There are, however, several details to be arranged for before such an action can be commenced. I have already written my clients fully about them.

I am at a loss to find any possible theory in which Big Sespe Oil Company can, at the present time, sup-

port any demand on the Sheriff for a deed of the property in question. It is certain beyond any question that no purchaser at an execution sale of real property is entitled to a conveyance of the property before the time within which redemption may be made has fully expired. In this particular instance, as you fully understand the "Right of Redemption" has been extended under Code of Civil Procedure Section 707, "until fifteen days from and after the final determination of such (accounting) action." The time within which such an action can and must be commenced is also, of course, absolutely solely controlled by the statute of limitations. This statutory time can in no way be abbreviated any more than can the statutory time within which the right of redemption exists. Until these periods have expired the Sheriff cannot legally give any deed of conveyance. And I am sure that you will agree with me in this conclusion.

While, for obvious reasons, I have thus stated the legal position of my clients, I do not want you to gain the impression that the contemplated action will be delayed a day longer than is necessary to properly and legally proceed under the existing conditions, for the contrary is true. I may also well call your attention to the fact that while it has no legal right to do so, Big Sespe Oil Company is in possession of and operating this property, and is monthly collecting a very considerable revenue therefrom. It is not, therefore, suffering during this time.

Moreover, this whole situation is entirely due to its

arbitrary, and unreasonable refusal to furnish the legally demanded statement of the large moneys it had collected from the property, and which it is apparently attempting to apply to its own use rather than on account of its judgment.

I will be obliged if you will promptly advise me of any further efforts to obtain this conveyance.

Thanking you for your very considerate attention, I remain,

Very truly yours,

William H. Cochran.

No. E-26—Eq.

Cochran vs Big Sespe Oil Co.

Deft. Exhibit No. E.

Filed 6th April, 1920.

CHAS N. WILLIAMS, Clerk

By Ernest J Morgan, Deputy Clerk

Defendant's Exhibit No. F.

July 27, 1918.

Mr. William H Cochran,

C/o Angelus Hotel,

Los Angeles, Calif.

Dear Sir:

Enclosed herewith please find copy of answer, which I shall file on behalf of Mr. McMartin in the case of Big Sespe Oil Company vs. McMartin now pending in our court.

I have already mailed you copy of Petition and Writ of Mandate in the matter.

Yours very truly,

BOWKER & SHERIDAN.

DGB/D

By—

Enc.

No. E-26- Eq.

Cochran vs Big Sespe Oil Co.,

Deft Exhibit No. F.

Filed 6th April, 1920.

CHAS N. WILLIAMS, Clerk,

By Ernest J Morgan

Deputy Clerk

Defendant's Exhibit No. G.

THE ANGELUS HOTEL

Fourth and Spring St.

Fine sample rooms

F. W. Paget

Manager.

Los Angeles, August 3, 1918.

Hon. Don G. Bowker,

Ventura, Cal.

My dear Mr. Bowker:

I beg to acknowledge the receipt of the copies of the Petition and answer in the proceedings of the Big Sespe Oil Co., against the Sheriff, which you so thoughtfully sent me. I would have acknowledged them more promptly but that I had expected to arrange to come up personally for the hearing on the

5th inst.. I now find it is impossible for me to postpone an engagement on that day, and which was made some time ago.

You are so well informed about the matters involved in this proceeding, that there is very little, if anything, that I need to say to you. I do not see, however, on what possible theory the Petitioner can be entitled to the deed in question, at the present time. By its failure to furnish the written statement of rents and profits, which was demanded from it, the time for the redemption of the property has been extended under the provisions of Section 711 of the Code of Civil Procedure, until after the final determination of such accounting action as the owners of the property are entitled to bring, also under the same section of the Code. Nor can there be any claim of Laches in the commencement of this action, as the time for the bringing of such an action is, and can be limited and abbreviated only by the statute of limitations applicable to actions of that character. Some time ago I wrote you quite fully on this point, and therefore need not elaborate it further. Nor do I see how the Petitioner can with any justice or propriety set up any alleged injury or prejudice from the delay in bringing this action inasmuch as the present situation is due entirely to their arbitrary refusal to furnish the account of the moneys which they had received, and which unquestionably they are bound to apply on account of the judgment under which the property was sold.

I do not believe that the Petitioner can legally establish either that the charter of the Pacific Crude Oil Co., has been forfeited or that the Company alone is entitled to make redemption of the property. Judging from what has happened in the other proceeding which was brought with this same purpose I assume that the Court will direct formal notice of the pending proceeding to be given to the Pacific Crude Oil Company. If, however, you find it necessary to introduce any proofs either to contradict the allegations of the petition, or to support your answer, I will be pleased to arrange to come to Ventura for the purpose of aiding you to that end, if you will give me as much notice as you possibly can arrange.

Please to advise me just what happens when the matter is called on the 5th inst.,.

Thanking you for your very courteous attention, which is greatly appreciated, I remain,

Very truly yours,

Wm. H. Cochran.

No. E-26—Eq.

Cochran -vs- Big Sespe Oil Co.,

Deft. Exhibit No. G.

Filed 6th April, 1920.

CHAS. N. WILLIAMS, Clerk

By Ernest J Morgan

Deputy Clerk

Defendant's Exhibit No. H.

August 9, 1918.

Mr. William H. Cochran,
c/o Angelus Hotel,
Los Angeles, California.

Dear Sir:

I beg to advise you that in the case of The Big Sespe Oil Company vs McMartin, the matter was heard on last Monday in our Superior Court, and the Court to date has not given us a decision upon the matter.

Yours very truly,

DGB/D

No. E-26 Eq.

Cochran vs Big Sespe Oil Co.,

Defendants Exhibit No. H.

Filed 6th April, 1920.

CHAS. N. WILLIAMS, Clerk

By Ernest J Morgan

Deputy Clerk

Defendant's Exhibit No. I.

THIS INDENTURE, made this 29th day of August, in the year of our Lord, one thousand nine hundred and eighteen, between E. G. McMartin, Sheriff, of the County of Ventura, State of California, party of the first part, and Big Sespe Oil Company, a corporation organized and existing under and by virtue of the laws of the State of California, party of the second part.

WITNESSETH:

THAT WHEREAS, by virtue of a writ of execution issued out of and under the seal of the Superior Court of the County of Ventura, State of California, dated the 2nd day of February, A. D. 1917, upon a judgment recovered in said Court on 2nd day of January, A. D. 1918, in favor of Big Sespe Oil Company, a corporation, to the said Sheriff directed and delivered, commanding him that of the personal property the said judgment debtor, Pacific Crude Oil Company, a corporation in his County, he should cause to be made certain moneys in the said writ specified, and if sufficient personal property of the said judgment debtor, Pacific Crude Oil Company, a corporation, could not be found, then he should cause the amount of the said judgment to be made of the lands, tenements, and real property belonging to said judgment debtor, Pacific Crude Oil Company, a corporation.

AND WHEREAS because sufficient personal property of the said judgement debtor, Pacific Crude Oil Company, could not be found whereof he, the said Sheriff could cause to be made the moneys specified in said writ, he, the said Sheriff did, in obedience to said command levy on, take and seize all the estate, right, title and interest, which the said judgment debtor, Pacific Crude Oil Company, a corporation, so had of, in and to the lands, tenements, real estate and premises hereinafter particularly set forth and described with the appurtenances, and did on the 3d day of March, A. D. 1917, sell the said premises at Public Auction at the

Court House door, in the town of San Buenaventura, Ventura County, State of California, between the hours of nine in the morning and five in the afternoon on that day, namely at 10 o'clock A. M., after first having given notice of the time and place of such sale by advertising the same according to law; at which sale the hereinafter described premises were struck off and sold to Big Sespe Oil Company, a corporation, for the sum of Seventeen thousand, three hundred forty dollars and fifty cents (\$17,340.50), United States gold coin, the said Big Sespe Oil Company, a corporation, being the highest bidder and that being the highest sum bidden, and the whole price paid for the same.

AND WHEREAS THE said Sheriff, after receiving from said purchaser the said sum of money, so bidden, as aforesaid, gave to him such certificate as is by law directed to be given, and filed for record in the office of the County Recorder of Ventura County, duplicate of such certificate.

AND WHEREAS one year after such sale has expired without any redemption of the said premises having been made, the said party of the first part having been directed and ordered to make and execute this deed by virtue of a peremptory writ of mandate issued out of the said Court under the seal thereof, under date of August 29th, 1918, and reference is hereby made to said writ, and by such reference the same is made a part thereof for all lawful purposes.

NOW, THIS INDENTURE WITNESSETH,
That I, E. G. McMartin, Sheriff aforesaid, and party

hereto of the first part, by virtue of said writ of Execution and said writ of Mandate above referred to, and in pursuance of the statute in such case made and provided, for and in consideration of the sum of money above mentioned, to him in hand paid, as afore-said, by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, conveyed and confirmed and by these presents does grant, bargain, sell, convey and confirm unto the said party of the second part, its successors and assigns, all the estate, right, title and interest which the said judgement debtor, Pacific Crude Oil Company, a corporation had on the 3d day of February, 1917, or at any time afterwards or now has of, in and to the following described premises:

All of that certain real property situate, lying and being in the County of Ventura, State of California, and particularly described as follows, to-wit:

The West half of Lot No. 6 and lots numbered 7 and 9 of section 1, in Township 4 North, Range 20 West, of San Bernardino Meridian in California, containing 81.07 of an acre.

Excepting therefrom the following described parcel of land situate in Lot 9, Section 1, in Township 4 North, Range 20 West of San Bernardino Meridian, County of Ventura, and State of California, described as follows:

Commencing at the Northwest corner of the Kentuck Oil Claim, as said claim is described in that patent exe-

cuted by the United States Government to J. S. Crawford, and Jos. F. Dye, Feb. 1, 1898, and recorded in Book 2, page 336 of Patents, Records of Ventura County, thence—

1st—East five (5) chains along the North line of said Kentuck Oil Claim, thence—

2nd: North at right angles three (3) chains, thence

3d: North sixty (60°) degrees West four (4) chains, thence

4th: South fifty six and one-half ($56\frac{1}{2}$) degrees west to a point four (4) chains North of the center of said section 1, Township 4 North, Range 20 West, which point is also the North west corner of the Southeast quarter of said Section 1; thence

5th: South four (4) chains along the West line of said Southeast quarter of said Section 1;

6th: East at right angles 5.95 chains to the West line of said Kentuck Oil Claim; thence

7th North along the West line of said Kentuck Oil Claim to place of beginning, containing 9 acres more or less.

The New York Oil and Placer Mining Claim located by O. P. Clark and Lee C. Gates, January 27, 1894, and recorded in Book 2, page 245 of Mines, Records of Ventura County and included in the location of the "Nellie Belle" Placer mining claim hereafter referred to.

Also all that part of the Henry Gage Placer Mining Claim not included in Lot 7, Section 1, Township 4-North, Range 20 West, S. B. M., located by Henry T.

Gage, December 22nd, 1890, and recorded in Book 3, page 154 of Mines, Records of Ventura County.

Also the Elwood Placer Mining claim located April 1, 1910, by T. M. Hornada, E. F. Coldwell, J. A. Clampitt, and E. F. Kendall, and recorded in Book 19, page 315, of mines, Records of Ventura County.

Also the "Nellie Belle" Placer mining Claim, located by T. M. Hornada, E. F. Coldwell, and J. A. Clampitt, April 1, 1910, and recorded in Book 19 at page 315 of Mines, Records of Ventura County.

Together with all and singular the tenements, and hereditaments and appurtenances thereunto belonging or in anywise appertaining.

TO HAVE AND TO HOLD the said above mentioned and described premises with the appurtenances unto the said party of the 2nd part, its successors and assigns forever as fully and absolutely as he, the Sheriff, aforesaid, can, may, or ought to by virtue of the said writ and of a statute in such case made and provided, grant, bargain, sell, release, consign, convey and confirm the same.

IN WITNESS whereof the said Sheriff, the party of the first part to these presents, has hereunto set his hands, and seal the day and year first above written.

E. G. McMARTIN (Seal)

Sheriff of County of Ventura, State of California.

U. S. I. R. S. \$17.50 cancelled.

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

On this 29th day of August, one thousand nine hundred and eighteen personally appeared before me John B. McCloskey, County Clerk of the County of Ventura, State of California and *Ex-Officio* Clerk of the Superior Court, in and for said County, the within named E. G. McMartin, Sheriff, of the County of Ventura, State of California, known to me to be the person described in and whose name is subscribed to the within instrument, and acknowledged to me that he, as such Sheriff of Ventura County, executed the same.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said Superior Court at my office, in the said County of Ventura, State of California, the day and year in this certificate first above written.

(Seal) J. B. McCloskey,
County Clerk and ex-officio clerk of the Superior
Court of the County of Ventura, State of Cali-
fornia.

Recorded at the Request of Cates & Robinson Sep
3 1918 at 40 min. past 9 o'clock a. m. J. L. Argabrite,
County Recorder.

STATE OF CALIFORNIA)
COUNTY OF VENTURA) ss.

I, J. L. Argabrite, County Recorder in and for said County hereby certify, that the annexed is a full, true

and correct copy of the instrument as recorded in Book 163 of Deeds at page 340.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal this 30th day of March A. D., 1920,

(Seal)

J. L. Argabrite,
County Recorder
By- E. W. Argabrite,
Deputy Recorder

No. E-26 Eq.

Cochran vs Big Sespe Oil Co.,

Defendants Exhibit No. I.

Filed 7th April, 1920.

CHAS. N. WILLIAMS, Clerk

By Ernest J. Morgan

Deputy Clerk

Defendant's Exhibit No. J.

STATE OF DELAWARE

Office of Secretary of State.

I, Everett C. Johnson, Secretary of State of the State of Delaware, do hereby certify that the certificate of incorporation of the "Pacific Crude Oil Company" was received and filed in this office, the 13th day of March, A. D. 1914, at 9 o'clock A. M.

And I do hereby further certify that the aforesaid corporation is no longer in existence and good standing under the laws of the State of Delaware, hav-

ing become inoperative and void March 21, A. D. 1917,
for non payment of taxes;

And I do hereby further certify that the aforesaid corporation was proclaimed, in accordance with the provisions of sections 75 and 76 of Chapter Six (6) of the Revised Statutes of 1915 on the twenty-eighth day of January A. D., 1918, the same having been reported to the Governor as having neglected or refused to pay their annual franchise taxes for two consecutive years.

And I do hereby further certify that the aforesaid corporation has not been reinstated, nor had its franchises restored to date of this certificate.

In Testimony Whereof, I have hereunto set my hand and affixed the great seal of the State of Delaware, at Dover, this 3d day of November, in the year of our Lord, One thousand nine hundred and nineteen.

Secretary of State

(SEAL)

EVERETT C. JOHNSON,

STATE OF DELAWARE)
) ss.
KENT COUNTY)

I, James Pennewill, Chief Justice of the State of Delaware, and as such the presiding Judge of the Superior Court of the said State in, and for Kent County aforesaid, do hereby certify that the preceding certificate of Everett C. Johnson, Esq., Secretary of State of the State of Delaware, to which the seal of the Secretary of State is affixed, as well as his signature, is in due form and by the proper officer.

James Pennewill,
Chief Justice.

I, Daniel M. Ridgely, prothonotary of the Superior Court of the State of Delaware, in and for Kent County, do hereby certify that Honorable James Pennewill, who hath given the foregoing certificate and subscribed his name thereto was, at the time of his so doing, and now is Chief Justice of the State of Delaware, and as such, the presiding Judge of the said Superior Court, in and for the said County, duly commissioned and qualified; and that full faith and credit are, and ought to be given to all of his official acts and attestations.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Superior Court the same being my seal of Office, at Dover in the County and State aforesaid this 3d day of November in the year of our Lord, one thousand nine hundred and nineteen.

Daniel M. Ridgely,
Prothonotary.

E-26 Eq.

Cochran vs Big Sespe Oil Co.

DEFENDANTS EXHIBIT NO. J.

7th of April, 1920.

CHAS. N. WILLIAMS, Clerk

By Ernest J. Morgan, Deputy Clerk

For Identification.

Defendant's Exhibit No. K.

THE
PACIFIC CRUDE OIL
COMPANY

Certificate of Incorporation.

We, the undersigned, in order to form a corporation for the purposes hereinafter stated, under the laws of the State of Delaware, do hereby certify as follows:

I. The corporate name is PACIFIC CRUDE OIL COMPANY.

II. The location of the principal office, of the corporation is in the City of Wilmington, County of Newcastle, and the Corporation Guarantee and Trust Company is designated as the statutory agent therein, in charge thereof, and upon whom process against the corporation may be served.

III. The objects for which the corporation is established are primarily:

To purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the capital stock, bonds or other securities or evidences of indebtedness created or issued by any other corporation

or corporations, association or associations of any state, territory or country.

To aid in any manner any corporation or association of which any bonds or other securities or evidences of indebtedness or shares of capital stock are held by the corporation and to do any and all acts and things designed to protect, preserve, improve and enhance the value of any such bonds or other securities or evidences of indebtedness or stock.

To hold as principal, or otherwise issue on commission, sell or dispose of any of the undertakings or resulting investments and to act as the broker for any corporation or corporations, undertakings or propositions.

To form, promote and assist financially or otherwise companies, syndicates and associations of all kinds, and to give any lawful guarantee in connection therewith or otherwise for the payment of money for the performances of any obligations or undertaking.

To purchase and hold real estate, and also to purchase and hold any interest in, or possessory title to, or leasehold right in, or lien upon, real estate, either in the State of Delaware, or in any other state within the United States of America, and to develop the same by mining or extracting oil or otherwise, and to engage in the business of mining and oil production.

As subsidiary to and in connection with the foregoing from time to time the corporation may:

Manufacture, purchase, or otherwise acquire goods, wares, merchandise and personal property of every

class and description and hold, own, mortgage, sell, or otherwise dispose of, trade, deal in and deal with the same.

Acquire and undertake the good will, property, rights, franchises, contracts and assets of every manner and kind, and the liabilities of any person, firm, association or corporation, either wholly or in part, and pay for the same in cash, stock or bonds of the corporation or otherwise.

Enter into, make, perform and carry out contracts of every kind and for any lawful purpose with any person, firm, association or corporation.

Issue bonds, debentures or obligations of the corporation, and at the option of the corporation to secure the same by mortgage, pledge, deed of trust or otherwise.

Acquire, hold, use, sell, assign, lease, grant licenses in respect of, mortgage or otherwise dispose of letters patent of the United States or any foreign country, patents, patent rights, licenses and privileges, inventions, improvements and processes, trade marks and trade names, relating to or useful in connection with any business of the corporation.

Hold, purchase, or otherwise acquire, sell, assign, transfer, mortgage, pledge, or otherwise dispose of shares of the capital stock and bonds, debentures or other evidences of indebtedness created by other corporation or corporations and while the holder thereof exercise all the rights and privileges of ownership, including the right to vote thereon.

Purchase, hold and reissue the shares of its capital stock, its bonds or other securities.

Remunerate any person or corporation for services rendered, or to be rendered, in placing or assisting to place or guaranteeing the placing or underwriting of any of the shares of stock of the corporation, or any debentures, bonds or other securities of the corporation, or in or about the formation or promotion of the corporation, or in the conduct of its business.

With a view to the working and development of the properties of the corporation, and to effectuate, directly or indirectly, its objects and purposes, or any of them, the corporation may, in the discretion of the directors, from time to time, carry on any other lawful business, manufacturing or otherwise, to any extent and in any manner not unlawful.

The corporation may conduct business in the State of Delaware and elsewhere, including any of the states, territories, colonies, or dependencies of the United States, the District of Columbia, and any and all foreign countries, have one or more offices therein and therein, to hold, purchase, mortgage and convey real and personal property, except as and when forbidden by local laws.

The foregoing clauses shall be construed both as objects and powers, but no recitation, expression or declaration of specific or special powers or purposes herein enumerated shall be deemed to be exclusive; but it is hereby expressly declared that all other law-

ful powers not inconsistent therewith are hereby included.

IV. The corporation is authorized to issue capital stock to the extent of eleven million dollars (\$11,000,000.00) divided into two hundred and twenty thousand shares of the par value of fifty dollars each.

Of said stock ten thousand shares shall be first Preferred Stock, ten thousand shares shall be Second Preferred Stock, and the balance of two hundred thousand shares shall be common stock.

Said classes of preferred stock may be issued when the Board of Directors shall determine, and the following terms and conditions shall apply to the First Preferred Stock, the Second Preferred Stock and the Common Stock.

(a) The first preferred stock shall entitle the holder thereof to receive out of the net earnings of the corporation, and the corporation shall be bound to pay a fixed cumulative dividend at the rate of but not exceeding six per centum per annum, payable January and July before any dividend shall be set apart or paid on the second preferred or on the common stock; provided, however, that whenever a dividend is paid on the first preferred stock, the directors shall have power in their discretion to declare and pay a dividend for a like period on the second preferred stock. The first preferred stock shall have first preference upon all the properties of the company in the disposition of the assets thereof, as to principal and unpaid dividends. It shall be redeemable at par either in

whole or in part in cash, at the option of the Board of Directors on any dividend date beginning July 1st, 1914, by the operation of a redemption fund set forth in clause "c" hereof, or otherwise. It shall be sold only at par for cash. No dividends shall be paid upon the common stock so long as the first preferred stock shall be outstanding.

(B) The second preferred stock shall entitle the holder thereof to receive out of the net earnings of the corporation a dividend at the rate of but not exceeding eight per centum per annum, payable January and July before any dividend shall be set apart or paid on the common stock, provided, however, that whenever a dividend is paid on the second preferred stock the directors shall have power in their discretion to declare and pay a dividend for a like period on the common stock; provided, further, however, that the said dividend upon the second preferred stock shall be at the rate of eight per centum per annum. The second preferred stock shall have preference upon all the properties of the company in the disposition of the assets thereof, as to principal only, subject only to the prior preference of the first preferred stock. It shall be redeemable either in whole or in part at par in cash at the option of the Board of Directors, on any dividend date beginning July 1st, 1914, by the operation of a redemption fund set forth in clause "c" hereof, or otherwise. It shall be issued only to fund the present cash obligations of the Pacific Petroleum Company (a Delaware corporation) upon the

acquisition of the property and assets for which said obligations were issued or incurred, and shall be further issued only in lieu of certain outstanding obligations of the said Pacific Petroleum Company to issue bonds upon the property and assets of the said Pacific Petroleum Company.

(c) A redemption fund shall be created by resolution of the Board of Directors, which shall provide that one-third of the proceeds of all the oil derived from new wells sunk by means of cash obtained from the sale of the first preferred stock shall be devoted to the redemption of the first preferred stock, and one-sixth of such proceeds to the redemption of the second preferred stock.

(d) One director shall be elected by vote of a majority of the holders of the outstanding first preferred stock, one director shall be elected by vote of a majority of the holders of the outstanding second preferred stock, and the balance of seats on the Board shall be filled by a vote of a majority of the holders of the outstanding common stock.

V. The capital stock with which the corporation will commence business is subscribed by the incorporators as follows:

Name	Residence.	No. of Shares Common Stock.
F. R. Hansell	Philadelphia, Pa.	3
Geo. H. B. Martin	Camden, N. J.	3
S. C. Seymour	Camden, N. J.	19

VI. The existence of this corporation is to be perpetual.

VII. The private property of the stockholders shall not be subject to the payment of corporate debts to any extent whatever.

VIII. In furtherance, and not in limitation of the powers conferred by statute, the board of directors are expressly authorized;

To hold their meetings, to have one or more offices, and to keep the books of the corporation within or except as otherwise provided by statute, without the State of Delaware at such places as may from time to time be designated by them.

To determine, from time to time whether, and, if allowed, under what conditions and regulations the accounts and books of the corporation shall be open to the inspection of the stockholders, and the stockholders' rights in this respect are, and shall be restricted or limited accordingly, and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute or authorized by the Board of Directors or by a resolution of the stockholders.

To make, alter, amend and rescind the by-laws of the corporation, to fix, determine from time to time and vary the amount to be reserved as working capital, to determine the times for the declaration and payment and the amount of each dividend on the stock, to determine, and direct the use and disposition of any surplus or net profits, and to authorize and cause to be executed mortgages and liens upon the real and personal property of the corporation, provided always that a majority of the whole Board concur therein.

Pursuant to the affirmative vote of the holders of a majority of the stock issued and outstanding, at a stockholders' meeting duly convened, to sell, assign, transfer, or otherwise dispose of the property including the franchises of the corporation as an entirety, provided always that a majority of the whole Board concur therein.

To appoint additional officers of the corporation, including one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, the person so appointed shall have and may exercise all the powers of the president of the treasurer and the secretary respectively, provided, however, that all vice-presidents shall be chosen from the directors.

By a resolution passed by a majority vote of the whole Board under suitable provision of the by-laws to designate two or more of their number to constitute an executive committee, which committee shall, for the time being, as provided in said resolution or in the by-laws have and exercise any or all of the powers of the Board of Directors, which may be lawfully delegated, in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

The corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate in the manner now or hereafter prescribed by statute for the amendment of the certificate of incorporation.

IN WITNESS WHEREOF, we have hereunto set
our hands and seals this 12th day of March, 1914

F. R. Hansell, (L. S.)

Geo. H. B. Martin, (L. S.)

S. C. Seymour, (L. S.)

Witness to the foregoing
signatures:

Joseph F. Cotter.

State of Pennsylvania,)
)SS.
County of Philadelphia)

BE IT REMEMBERED, that on the 12th day of
March, A. D., 1914, personally appeared before me
F. R. Hansell, Geo. H. B. Martin and S. C. Seymour
parties to the foregoing Certificate of Incorporation,
known to me personally to be such, and I having first
made known to them, and each of them, the contents
of said Certificate, they did each severally acknowledge
that they signed, sealed and delivered the same as their
several voluntary act and deed, and each deposed that
the facts therein stated were truly set forth.

GIVEN under my hand and seal of office the day
and year aforesaid.

Joseph F. Cotter,
Notary Public.

Commission Expires May 14, 1915.

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. Joseph F. Cotter .
. Notary Public .
. Phila, Pa. .
.
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STATE OF DELAWARE
Office of Secretary of State.

I, Everett C. Johnson, Secretary of State of the State of Delaware, do hereby certify that the above and foregoing is a true and correct copy of Certificate of Incorporation of the "PACIFIC CRUDE OIL COMPANY," as received and filed in this office the thirteenth day of March, A. D., 1914, at 9 o'clock A. M.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the Great Seal of
the State of Delaware, at Dover this third
day of November, in the year of our Lord
one thousand nine hundred and nineteen.

(Seal) EVERETT C. JOHNSON,
Secretary of State.

State of Delaware,)
)SS.
Kent County)

I, James Pennewill, Chief Justice of the State of Delaware, and as such the presiding Judge of the Superior Court of the said State, in and for Kent County aforesaid, do hereby certify that the preceding certificate of Everett C. Johnson, Esq., Secretary of State of the State of Delaware, to which the Seal of the Secretary of State is affixed, as well as his signature, is in due form and by the proper officer.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, at Dover, in the County and State aforesaid, this 3rd day of November, in the year of our Lord One Thousand Nine Hundred and Nineteen.

JAMES PENNEWILL
Chief Justice.



State of Delaware,)
)SS.
Kent County)

I, Daniel M. Ridgely, Prothonotary of the Superior Court of the State of Delaware, in and for Kent County, do hereby certify that Honorable James Pennewill who hath given the foregoing certificate and subscribed his name thereto was, at the time of his so doing, and now is, Chief Justice of the State of Delaware, and as such the presiding Judge of the said Superior Court in and for said County, duly commissioned and qualified; and that full faith and credit are and ought to be given to all of his official acts and attestations.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Superior Court, the same being my Seal of Office, at Dover, in the County and State
(Seal) aforesaid, this Third day of November, in the year of our Lord one thousand nine hundred and nineteen.

DANIEL M. RIDGELY

Prothonotary.

(Endorsed)

No. E-26 Eq. Cochran vs. Big Sespe Oil Co. Deft.
Exhibit No. K. Filed 7 April, 1920. Chas. N. Williams, Clerk, By Ernest J. Morgan Deputy Clerk.

Complainant's Exhibit No. 4.
(PHOTO)

Complainant's Exhibit No. 6.
(PHOTO)

Complainant's Exhibit No. 8.

SALES
to
UNION OIL COMPANY.

Date	Net Bbls.	Price	Amount	Total	Paid
1917.					
Mar. 13	224.82	.76	170.86		
24	210.97	.75	158.23		
				329.09	
				167.77	
Apr. 11	435.79	.75			
3	223.69	.75	167.77		
May 14	218.24	.80	174.59		
30	226.72	.81	183.64		
				526.00	
June 10	227.73	.90	204.96		
21	227.89	.91	207.38		
30	226.44	1.00	226.44		
				638.78	

Date	Net Bbls.	Price	Amount	Total	Paid
July 13	232.31	1.00	232.31		
23	201.83	1.01	203.85		
				436.16	
Aug. 6	227.80	1.00	227.80		
17	222.33	1.00	222.33		
29	195.40	.99	193.45		
				643.58	
Sept. 8	217.36	1.00	217.36		
21	230.37	1.00	230.37		
29	187.78	.99	185.90		
				633.63	
				635.51	
1918. Jan. 13	167.50	1.00	167.50		
22	228.05	1.01	230.33		
25	238.58	1.01	240.97		
				638.80	
				634.13	

Feb.	8	231.81		1.02	236.45	
	17	235.05		1.02	239.75	
	28	221.85		1.01	224.07	
			688.71			700.27
Mar.	16	217.43				
	24	226.14		1.01		
			443.57			448.01
Apr.	5	217.96		1.02	222.32	
	16	236.03		1.01	238.39	
	25	235.40		1.01	237.75	
			689.39			698.46
May	7	237.02				
	21	240.31				
	31	240.06		1.26		
			717.39			903.91

SALES
to
TURNER OIL COMPANY.

Date	Net Bbls.	Price	Amount	Total	Paid
1918.					
June 12	207.25	1.37	283.93		
20	156.02	1.36)			
30	233.75	1.36)	530.09		
				814.02	
July 12	234.83	1.36			
24	242.25	1.36			
31	130.00	1.36			
				607.08	
Aug. 10	236.35	1.36			
21	236.99	1.36			
31	173.20	1.36			
				646.54	
Sept. 10	228.60	1.36			
23	237.57	1.36			
30	161.47	1.36			
				627.64	
				853.59	

Date	Net Bbls.	Price	Amount	Total	Paid
Oct. 12	229.08	1.36			
24	213.62	1.36			
31	158.67	1.36			
			601.37	817.86	
Nov. 12	235.52	1.36			
23	224.43	1.36			
30	166.42	1.36			
			626.37	851.86	a/c 832.60 — 19.26
Dec. 12	221.37				
23	231.88				
31	174.38				
			627.63	853.58	a/c 872.84 + 19.26
1919.					
Jan. 12	274.05				
26	232.59				
			506.64	689.03	
Feb. 7	238.91				
19	230.33				

28	170.79	640.03	870.44	
Mar. 11	233.04			
22	181.72			
31	241.00	655.76	891.83	a/c 891.25 — .58
Apr. 12	238.54			
23	223.96	462.50	629.00	a/c 629.58 + .58
		<u>2892.56</u>		
May 5	233.22			
17	245.37			
28	240.63			
		1.36		
		1.36		
		3933.89		
June 11	229.90	719.22	978.14	
26	197.24	427.14	580.91	
July 26	240.98	240.98	327.73	
Aug. 4	187.48			

[illegible]

Feb.	9	186.43		
	21	214.77		
		<hr/>		
1919.			401.20	
Nov.	30	226.46		
			1.36	
				545.63
				307.98

No run tickets for January or February, 1919.
 Mar. 31 run ticket shows 241.60 instead of 241.00
 Apr. 23 " " 229.09 " 223.96

U. S. DISTRICT COURT,
 No. E 26 — Cochran vs. Big Sespe Oil Co.
 Complainant's Exhibit No. 8 — (5 pages)
 Filed June 2, 1920.
 On Spec Ref Force Parker, Spec Master.

Defendant's Exhibit No. B.**SHERIFF'S OFFICE**

County of Ventura)
State of California) ss.

**CERTIFICATE OF SALE OF PERSONAL
PROPERTY.**

I, E. G. McMartin, Sheriff of the County of Ventura, State of California, do hereby certify that, under and by virtue of an execution issued out of the Superior Court of the County of Ventura, in a certain action lately pending in said Court, at the suit of Big Sespe Oil Co., A Corporation, Plaintiff, against William H. Cochran, et al, Defendants, attested the 2nd day of February, A. D. 1917, by which I was commanded to make the sum of \$17,640.50 with interest and costs, to satisfy the judgment in said action, out of the Personal property of defendant Pacific Crude Oil Co., a corporation, if sufficient personal property could be found, all as more fully appears by the said Writ, reference thereunto being hereby made; I have levied on, and on the 17th day of February, A. D. 1917, at 11 o'clock A. M. at the Pacific Crude Oil Wells in the _____, in said County of Ventura, duly sold at public auction according to law, and after due and legal notice, to Big Sespe Oil Co., a corporation, who made the highest bid therefor at such sale, for the sum of \$300.00 in lawful money of the United States, which was the whole price paid therefor, all the right, title and interest of the said judgment debtor, Pacific Crude Oil Co., a corporation, in and to the following described personal property, to wit:

Four (4) Oil wells including tubing, casing rods, pumps, pumping jacks and derricks.

One pumping plant including 20 H. P. "Foos" gas engine.

One (1) cook house, one (1) bunk house, One (1) engine house, One (1) blacksmith shop, Two (2) 300 barrel wooden tanks, One (1) 25 H. P. steam boiler, Two (2) 12 H. P. Bovard and Sefang steam engines, one string 5- $\frac{5}{8}$ " oil well drilling tools, one half mile 2" oil pipe line, one quarter mile 1" and 2" water pipe line, One (1) cast iron cooking range, one (1) lot of miscellaneous cooking utensils, one (1) lot of miscellaneous small tools.

E. G. McMartin, Sheriff.

By R. N. Haydon, Undersheriff.

Dated at Ventura, Cal. this 17th day of February,
A. D. 1917.

U. S. DISTRICT COURT

No. E 26 Cochran vs. Big Sespe

Defendant's Exhibit No. ("B")

Filed June 14 — 1920

On Spec Ref Force Parker,

Special Master.

Defendant's Exhibit No. C.

Duplicate

For Sales of 1901 and Thereafter

CERTIFICATE OF REDEMPTION OF REAL
ESTATE PURCHASED BY THE STATE

ESTIMATE of the amount required to redeem the
within described real estate, which was sold to the

State on the 26th day of June, 1916, for the delinquent taxes of 1915, both installments, and redeemed on the 14th day of March, 1917, in accordance with the provisions of section three thousand eight hundred and seventeen of the Political Code, as amended March 20, 1905.

Assessed to Pacific Crude Oil Co.,

DESCRIPTION OF REAL ESTATE

Patented land, The W 1-2 of Lot 6 and all of Lots 7 and 9 contg 81.7 acres in Sec 1 Twp 4 R, 20 W. S. B. M. (except 7.50 acres in lot conveyed to J. S. Crawford in Book 124 page 155). Net Mineral int in and to Lots 1 and 2 and E 1-2 of Lot 6 (98a) in Sec 1 Twp 4 N. R. 20 W. S. B. M.

Buildings and producing wells thereon.

Also development plant, derricks, tools, tanks, casings, pipe line etc.

That part of Sec 6 Twp 4 N. R. 19 W., lying on W. of Spring Valley extension, Los Angeles and Hawks Wing Mining Claims and North of Central Oil Claim. Assessed value of property for the year of

sale	\$4,200.00
<hr/>	
Delinquent State and County Taxes of 1915	\$ 90 30
Penalties for delinquencies (15 per ct and 5 per ct.)	15 90
Delinquent special school or district tax	
Delinquent poll tax	21 00
Costs	2 50
Interest on the aggregate amount of taxes from date of sale	5 84
20% Penalty on redemption	22 26
Total amount necessary to redeem	157 80

STATE OF CALIFORNIA,)
County of Ventura,) ss.

I, J. L. ARGABRITE, County Auditor in and for the said County, State aforesaid, do hereby certify that the foregoing statement contains a full and correct estimate of the amount necessary to redeem the within described real estate, made in accordance with the provisions of Section 3817, Political Code, as amended March 20, 1905.

WITNESS my hand, affixed at San Buenaventura, this 14th day of March, 1917.

J. L. ARGABRITE, *County Auditor.*

By E. W. ARGABRITE, *Deputy.*

OFFICE OF THE COUNTY TREASURER,
COUNTY OF VENTURA

RECEIVED of Arthur M. Cates, Redemptioner, One Hundred Fifty seven 80/100 Dollars in lawful money of the United States, upon redemption of the within described real estate under the provisions of Section 3817 of the Political Code, as amended March 20, 1905.

WITNESS my hand, this 14th day of March, 1917.

H. E. PECK, *County Treasurer.*

By *Deputy.*

RECEIVED of Arthur M. Cates, Redemptioner, a copy of the within estimate, certificate, and receipt, this 14th day of March, 1917.

J. L. ARGABRITE, *County Auditor.*

By E. W. ARGABRITE, *Deputy.*

U. S. DISTRICT COURT

No. E-26 Cochran vs. Big Sespe

Defendant's Exhibit No. C.

Filed June 15, 1920.

On Spec Ref

Force Parker,

Spec Master.

Defendant's Exhibit No. D.

(PHOTO)

Defendant's Exhibit No. E.

(PHOTO)

[TITLE AS BEFORE.]

Stipulation to the "Plaintiff's Exhibit No. 14", in the
Record on Appeal.

IT IS HEREBY STIPULATED AND AGREED
by and between the several parties to the above entitled
suit, as follows, to-wit:

No 3463

19 3463
CASH STUB
1916-1917

FIRST PAYMENT

15 per cent.

RECEIPT

For SECOND INSTALLMENT of Taxes

WYOMING COUNTY 1916-1917

\$ 77.30

3 per cent. \$

Address \$

ASSIGNED TO

NAME

Total Tax \$ 100.00

Received on 12-1-17

Received on 12-1-17

Received on 12-1-17

Received on 12-1-17

Received on 12-1-17

Received on 12-1-17

Received on 12-1-17

IDENTIFIED

1917

WYOMING COUNTY

State and County Tax Receipt for the Fiscal Year 1916-1917

Received by T. ALEXANDER the FIRST INSTALLMENT of State, County and Special School Tax for the Fiscal Year 1916-1917 upon the following property assessed to:

Country of Ventura, State of California

For a parcel of land in the County of Ventura, State of California, containing 1.00 acre, more or less, situated in the Township of Santa Monica, County of Ventura, State of California, and being the same as described in the deed of conveyance from the State of California to the County of Ventura, dated and recorded in the County of Ventura, State of California, in Book 10 of Deeds, page 100.

PAID TO: T. ALEXANDER

100.00

DESCRIPTION

Area

Improvements

Value

First Installment

Second Installment

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

1.00

100.00

720.00

44.00

EXAMINE THIS receipt if it contains any error in the property.

Always return this receipt to the assessor of your town.

Please return this receipt when you pay your Second Installment.

WYOMING COUNTY

1917

WYOMING COUNTY

WYOMING COUNTY

WYOMING COUNTY

U. S. DISTRICT COURT
No. E 26 Cochran v. Big Sespe
Defendant's Exhibit No. D
Filed June 15, 1920
Spec. Ref.—Force Parker
Spec. Master

U. S. DISTRICT COURT
No. E 26 Cochran v. Big Sespe
Defendant's Exhibit No. E
Filed June 15, 1920
Spec. Ref.—Force Parker
Spec. Ref.

FIRST: That "Plaintiff's Exhibit No. 14" as filed on the hearing and trial of this suit, comprises and is a copy of the following certain laws of the State of Delaware, viz:-

GENERAL CORPORATION LAWS OF THE STATE OF DELAWARE, as found in Chapter 65, of the Revised Statutes of 1915, and as amended and approved March 8, A. D. 1915, and further amended and approved March 20 and April 9, A. D. 1917, TOGETHER WITH THE ANNUAL FRANCHISE TAX LAW OF THE STATE OF DELAWARE, as found in Chapter 6, Sections 65 to 83, inclusive, of the Revised Statutes of 1915, and as amended and approved March 8 A. D. 1915.

SECOND: That the record to be transmitted by the Clerk of this Court, to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, on the appeal herein of the Defendant, Big Sespe Oil Company, need not and shall not include the said "Plaintiff's Exhibit No. 14," in full, but may and shall include only the following designated and quoted "Sections" as they appear and are set forth in the said Exhibit; and that for the purposes of the said appeal, such included "Sections" shall be considered to constitute the said Exhibit. The "Sections" to be thus included, provide, in full and verbatim, as follows:

GENERAL CORPORATION LAWS.

"Sec. 2. POWERS:—Every corporation created under the provisions of this Chapter shall have power:

1. To have succession, by its corporate name, for

the time stated in its certificate of incorporation, and when no period is limited, it shall be perpetual.

2. To sue and be sued, complain and defend in any court of law or equity.

3. To make and use a common seal, and alter the same at pleasure.

4. To hold, purchase and convey real and personal estate, and to mortgage or lease any such real and personal estate with its franchises; the power to hold real and personal estate, except in the case of religious corporations, shall include the power to take the same by devise or bequest.

5. To appoint such officers and agents as the business of the corporation shall require and to allow them suitable compensation.

6. To make by-laws not inconsistent with the Constitution or laws of the United States or of this State, fixing and altering the number of its directors, for the management of its property, the regulation and government of its affairs and for the certification and transfer of its stock, with penalties for the breach thereof not exceeding twenty dollars.

7. To wind up and dissolve itself, or to be wound up and dissolved in the manner hereinafter mentioned.

8. To conduct business in this State, other States, the District of Columbia, the territories and colonies of the United States and in foreign countries, and to have one or more offices out of this State, and to hold, purchase, mortgage and convey real and personal property out of this State, provided such powers are in-

cluded within the objects set forth in its certificate of incorporation.

Sec. 3. ADDITIONAL POWERS:—In addition to the powers enumerated in the second section of this Chapter, every corporation, its officers, directors and stockholders, shall possess and exercise all the powers and privileges contained in this Chapter, and the powers expressly given in its charter or in its certificate under which it was incorporated, so far as the same are necessary or convenient to the attainment of the objects set forth in such charter or certificate of incorporation; and shall be governed by the provisions and be subject to the restrictions and liabilities in this Chapter contained, so far as the same are appropriate to and not inconsistent with such charter or Act under which such corporation was formed; and no corporation shall possess or exercise any other corporate powers, except such incidental powers as shall be necessary to the exercise of the power so given.

Sec. 9. BOARD OF DIRECTORS; QUALIFICATIONS; POWERS; CLASSES; EXECUTIVE COMMITTEE:—The business of every corporation organized under the provisions of this Chapter shall be managed by a Board of not less than three Directors except as hereinafter provided; they shall hold office until their successors are respectively elected and qualified, and a majority of them shall constitute a quorum for the transaction of business. The Board of Directors may, by resolution, passed by a majority of the whole Board designate two or more of their number

to constitute an executive committee, who, to the extent provided in said resolution or in the by-laws of said company, shall have and exercise the powers of the Board of Directors in the management of the business and affairs of the company, and may have power to authorize the seal of the company to be affixed to all papers which may require it. The Directors of any corporation organized as aforesaid may, if so stated in the certificate of incorporation or in any amendment thereto, or may by a vote of the stockholders, be divided into one, two or three classes; the term of office of those of the first class to expire at the annual meeting next ensuing; of the second class one year thereafter; of the third class two years thereafter, and at each annual election held after such classification and election, directors shall be chosen for a full term, as the case may be, to succeed those whose terms expire.

Sec. 10. OFFICERS; FAILURE TO ELECT NOT TO DISSOLVE CORPORATION; VACANCIES:—Every corporation organized under this Chapter shall have a President, Secretary and Treasurer, who shall be chosen by the Directors or stockholders, as the by-laws may direct; and shall hold their offices until their successors are chosen and qualified; the President shall be chosen from among the Directors; the Secretary shall be sworn to the faithful discharge of his duty, and shall record all the proceedings of the meetings of the corporation and directors in a book to be kept for that purpose, and perform such other duties

as shall be assigned to him; the Treasurer may be required to give bond in such sum and with such surety or sureties as shall be provided by the by-laws, for the faithful discharge of his duty.

The Secretary and Treasurer may or may not be the same person, and if the corporation have a Vice-President, he may, if deemed advisable by the Directors, hold the offices of Vice-President and Treasurer, or Vice-President and Secretary, but not the offices of Vice-President, Secretary and Treasurer.

The corporation may have such other offices, agents and factors as may be deemed necessary, who shall be chosen in such manner and hold their offices for such terms as may be prescribed by the by-laws, or determined by the Board of Directors, and may secure the fidelity of any or all of such officers by bond or otherwise; and may also provide by the by-laws for the qualification of any or all of such officers before any person authorized by law to administer an oath.

A failure to elect annually a President, Secretary, Treasurer or other officers shall not dissolve a corporation.

Any vacancy occurring in the office of President, Secretary or Treasurer by death, resignation, removal or otherwise, shall be filled in the manner provided for in the by-laws; in the absence of such provision, such vacancy shall be filled by the Board of Directors.

Sec. 39. DISSOLUTION; PROCEEDINGS FOR:
—If it should be deemed advisable, in the judgment of the Board of Directors, and most for the benefit of any

corporation organized under this Chapter, that it should be dissolved, the Board, within ten days after the adoption of a resolution to that effect by a majority of the whole Board at any meeting called for that purpose, of which meeting every director shall have received at least three days' notice, shall cause notice of the adoption of such resolution to be mailed to each stockholder residing in the United States, and thereupon cause a like notice to be inserted in a newspaper published in the County wherein the corporation shall have its principal office, at least three weeks successively, once a week, next preceding the time appointed for the same, of a meeting of the stockholders having voting power, to be held at the office of the corporation, to take action upon the resolution so adopted by the Board of Directors, which meeting shall be held between the hours of ten o'clock in the forenoon and three o'clock in the afternoon of the day so named, and which meeting may, on the day so appointed, by consent of a majority in interest of the stockholders present in person or by proxy, having voting power, be adjourned from time to time, for not less than eight days at any one time, of which adjourned meeting notice by advertisement in said newspaper shall be given; and if at any such meeting two-thirds in interest of all the stockholders, having voting power, shall consent that a dissolution shall take place and signify their consent in writing, such consent, together with a list of the names and residences of the directors and officers, certified by the President and Secretary and

Treasurer, shall be filed in the office of the Secretary of State, who, upon being satisfied by due proof that the requirements aforesaid have been complied with, shall issue a certificate that such consent has been filed, and the Secretary of State shall cause such certificate to be published in one issue in a newspaper published in the County wherein the principal office of the dissolved corporation was situated. The Secretary of State shall ascertain the charge for publishing the certificate of dissolution as aforesaid, and collect the amount from the corporation before the certificate of dissolution is issued; and upon the filing in the office of the Secretary of State of an affidavit of the manager or publisher of the said newspaper that said certificate has been published one time, in said newspaper, the corporation shall be dissolved.

Whenever all the stockholders, having voting power, shall consent in writing to a dissolution, no meeting of stockholders shall be necessary, but on filing said consent in the office of the Secretary of State, he shall, as above provided, issue a certificate of dissolution, which shall be published as above provided.

Whenever the Secretary of State issues a certificate of dissolution it shall be recorded in the office of the Recorder of the County in which the principal office of the corporation was maintained.

Sec. 40. CONTINUATION OF CORPORATION AFTER DISSOLUTION; FOR PURPOSES OF SUIT, &c.:—All corporations, whether they expire by their own limitation, or are otherwise dissolved, shall

nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established.

Sec. 41. TRUSTEES UNDER DISSOLUTION:—Upon the dissolution of any corporation under the provisions of Section 39 of this Chapter, the directors, or the governing body, by whatever name it may be known, shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell, and convey the property, real and personal, and divide the moneys and other property among the stockholders, after paying its debts.

Sec. 42. TRUSTEES UNDER DISSOLUTION; POWERS AND LIABILITIES:—The persons constituted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and shall be sueable by the same name for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts, to the amounts of the moneys and property of such corporation which shall come into their hands or possession.

Sec. 43. DISSOLVE CORPORATIONS; RECEIVERS FOR; HOW APPOINTED; POWERS:

—When any corporation organized under this Chapter shall be dissolved in any manner whatever, the Court of Chancery, on application of any creditor or stockholder of such corporation, at any time, may either continue such directors, trustees as aforesaid, or appoint one or more persons to be receivers of and for such corporation, to take charge of the estate and effects thereof, and to collect the debts and property due and belonging to the company, with power to prosecute and defend, in the name of the corporation, or otherwise, all such suits as may be necessary or proper for the purposes aforesaid, and to appoint an agent or agents under them, and to do all other acts which might be done by such corporation, if in being, that may be necessary for the final settlement of the unfinished business of the corporation; and the powers of such trustees or receivers may be continued as long as the Chancellor shall think necessary for the purposes aforesaid.

Sec. 44. JURISDICTION OF COURT OF CHANCERY:—The Court of Chancery shall have jurisdiction of such application and of all questions arising in the proceedings thereon, and may make such orders and decrees and issue injunctions therein as justice and equity shall require.

Sec. 45. TRUSTEES OR RECEIVERS; DUTIES OF:—The said trustees or receivers after payment of all allowances, expenses and costs, and the satisfaction of all special and general liens upon the funds of the corporation to the extent of their lawful priority, shall

pay the other debts due from the corporation, if the funds in their hands shall be sufficient therefor, and if not, they shall distribute the same ratably among all the creditors who shall prove their debts in the manner that shall be directed by an order or decree of the court for that purpose; and if there shall be any balance remaining after the the payment of such debts and necessary expenses, they shall distribute and pay the same to and among those who shall be justly entitled thereto, as having been stockholders of the corporation or their legal representatives.

Sec. 46. DISSOLUTION; NO CAUSE FOR ABATEMENT OF ACTIONS; SUGGESTION ON RECORD; ACTION CONTINUED AGAINST TRUSTEES OR RECEIVERS:—If any corporation organized under this Chapter becomes dissolved by the expiration of its charter or otherwise, before final judgement obtained in any action pending or commenced in any Court of Record of this State, against any such corporation, the said action shall not abate by reason thereof, but the dissolution of said corporation being suggested upon the record, and the names of the trustees or receivers of said corporation being entered upon the record, and notice thereof served upon said trustees or receivers, or if such service be impracticable upon the counsel of record in such case, the said action shall proceed to final judgement against the said trustees or receivers by the name of the corporation.

Sec. 47. DECREE OF DISSOLUTION OR FORFEITURE OF CHARTER; FILED WITH SECRE-

TARY OF STATE:—Whenever any corporation is dissolved or its charter forfeited by decree or judgment of the Court of Chancery, the said decree or judgment shall be forthwith filed by the Register in Chancery of the County in which such decree of judgment shall be entered, in the office of the Secretary of State, and a note thereof shall be made by the Secretary of State on the charter or certificate of incorporation, and on the index thereof, and be published by him in the next volume of Laws, which he shall cause to be published.

FRANCHISE TAX LAW.

Sec. 74. FAILURE TO PAY FRANCHISE TAX FOR TWO YEARS, CHARTER VOID; EXTENSION OF TIME FOR PAYMENT; HOW OBTAINED:—If any corporation created after the tenth day of March, A. D. 1899, shall for two consecutive years neglect or refuse to pay the State any tax or taxes which has or have been or shall be assessed against it, or which it is required to pay, under any law of this State and made payable into the State Treasury, the charter of such corporation shall be void, and all powers conferred by law upon such corporation are declared inoperative and void, unless the Governor shall for good cause shown to him, give further time for the payment of such tax or taxes, in which case a certificate thereof shall be filed by the Governor in the office of the State Treasurer, stating the reasons therefor.

Sec. 75. REPORT OF DELINQUENT CORPORATIONS BY THE STATE TREASURER TO GOVERNOR; PROCLAMATION BY GOVERNOR:—On or before the first Tuesday of January in each year, the State Treasurer shall report to the Governor a list of all the corporations or companies which for two years next preceding such report have failed, neglected or refused to pay the taxes assessed against them or due by them, under the law of this State, and the Governor shall forthwith issue his proclamation, declaring that the charters of these corporations are repealed.

Sec. 76. PROCLAMATION FILED AND PUBLISHED; NOTE ON RECORD OF CERTIFICATE OF INCORPORATION OF REPEAL OF CHARTER:—The Proclamation of the Governor shall be filed in the office of the Secretary of State, and published once in one newspaper within the State.

Upon the filing of said Proclamation, the Secretary of State shall transmit forthwith to the Recorder of each County of this State a certified copy of said Proclamation and each Recorder shall, upon receipt of said certified copy, forthwith mark in brief upon the margin of the record of the certificate of incorporation named in said Proclamation, which is of record in his office, the fact that the Charter of said corporation is repealed and the date of said repeal.

Sec. 77. ACTING UNDER PROCLAIMED CHARTER A MISDEMEANOR; PENALTY:—

Any person or persons, who shall exercise or attempt to exercise any powers under the charter of any such corporation after the issuing of such proclamation, shall be deemed guilty of a misdemeanor, and shall be punished by imprisonments not exceeding one year, or by fine not exceeding one thousand dollars, or both, in the discretion of the court.

Sec. 78. COLLECTION OF TAX; FURTHER REMEDY IN COURT OF CHANCERY; RECEIVER WHEN APPOINTED; PROPERTY OF DELINQUENT CORPORATION HOW APPLIED TO PAYMENT OF TAX:—After any corporation of this State, incorporated after the tenth day of March A. D. 1899, has failed and neglected for the space of two consecutive years to pay the taxes imposed on it by law, and the State Treasurer of this State shall have reported such corporation to the Governor of this State, as provided in Section 75 of this Chapter, then it shall be lawful for the Attorney General of this State to proceed against said corporation in the Court of Chancery of this State for the appointment of a receiver, or otherwise, and the said court in such proceeding shall ascertain the amount of the taxes remaining due and unpaid by such corporation to the State of Delaware, and shall enter a final decree for the amount so ascertained, and thereupon a *fiери facias* or other process shall issue for the collection of the same as other debts are collected, and if no property which may be seized and sold on *fiери facias* shall be found within the said State of Delaware, sufficient to

pay such decree, the said court shall further order and decree that the said corporation, within ten days from and after the service of notice of such decree upon any officer of said corporation upon whom service of process may be lawfully made, or such notice as the court shall direct, shall assign and transfer to the trustees or receiver appointed by the court, any chose in action, or any patent or patents, or any assignment of or license under any patented invention or inventions owned by, leased or licensed to or controlled in whole or in part by said corporation, to be sold by said receiver or trustee for the satisfaction of such decree, and no injunction theretofore issued nor any forfeiture of the Charter of any such corporation shall be held to exempt such corporation from compliance with such order of the court; and if the said corporation shall neglect or refuse within ten days from and after the service of such notice of such decree to assign and transfer the same to such receiver or trustee for sale as aforesaid, it shall be the duty of said court to appoint a trustee to make the assignment of the same, in the name and on behalf of such corporation, to the receiver or trustee appointed to make such sale, and the said receiver or trustee shall thereupon, after such notice and in such manner as required for the sale under *fiери facias* of personal property, sell the same to the highest bidder, and the said receiver or trustee, upon the payment of the purchase money, shall execute and deliver to such purchaser an assignment and transfer of all the patents and interests of the corporation

so sold, which assignment or transfer shall vest in the purchaser a valid title to all the right, title and interest whatsoever of the said corporation therein, and the proceeds of such sale shall be applied to the payment of such unpaid taxes, together with the costs of said proceedings.

Sec. 80 MISTAKES IN PROCLAMATION; HOW CORRECTED:—Whenever it is established to the satisfaction of the Governor that any corporation named in said proclamation has not neglected or refused to pay said tax within two consecutive years, or has been inadvertently reported to the Governor by the State Treasurer as refusing or neglecting to pay the same as aforesaid, the Governor is authorized to correct such mistake, and to make the same known by filing his proclamation to that effect in the office of the Secretary of State.

Sec. 81. RESTORATION OF CHARTERS; HOW PROCURED; EFFECT OF:—If the charter of any corporation created after the tenth day of March A. D. 1899, shall become inoperative or void by proclamation of the Governor, or by operation of law, for non-payment of taxes, the Governor by and with the advice of the Attorney General may, at any time within two years thereafter, or after the default in the payment of such taxes, upon payment by said corporation to the Secretary of State of such sum in lieu of taxes and penalties as to them may seem reasonable, but in no case to be less than the fees required as upon the filing of the original Certificate of Incorporation,

permit such corporation to be reinstated and entitled to all its franchises and privileges, and upon such payment as aforesaid the Secretary of State shall issue his certificate entitling such corporation to continue its said business and its said franchises.

In all cases in which the charter of any corporation created after the tenth day of March A. D. 1899, has become inoperative or void by proclamation of the Governor or by operation of law for non-payment of taxes, and such corporation has been reinstated and entitled to all its franchises and privileges, such reinstatement shall validate all contracts, acts, matters and things made, done and performed within the scope of its charter by such corporation, its officers and agents, during the time when such charter was inoperative or void, with the same force and effect and to all intents and purposes as if said charter had at all times remained in full force and effect; and all real and personal property, rights and credits which were of said corporation at the time its charter became inoperative or void, and which were not disposed of prior to the time of such reinstatement, shall be vested in such corporation, after such reinstatement, as fully and amply as they were held by said corporation at and before the time its charter became inoperative or void; and said corporation after such reinstatement shall be as exclusively liable for all contracts, acts, matters and things made, done or performed in its name and on its behalf by its officers and agents prior to such reinstatement, as if its charter had at all times remained in full force and effect.

Nothing in this Section contained shall relieve such corporation from penalty of forfeiture of franchises in case of failure to pay future taxes imposed as in sections 65 to 83 inclusive of this Chapter provided."

THIRD: That the Defendant-Appellant, Big Sespe Oil Company, and the Complainant and Intervenor, Appellees, either in their briefs, oral arguments, or otherwise, on the aforementioned appeal in this suit, cannot and shall not refer to or cite any provision or provisions, or sections of the aforementioned General Corporation Laws of the State of Delaware, or of the aforementioned Annual Franchise Tax Law of the State of Delaware, which are not included and embodied within the sections thereof hereinbefore particularly and at length set forth; nor shall the said Defendant-Appellant present or raise any question based upon the said Laws or either of them, which is not within and covered by one or more of these particularly mentioned Sections of the said Laws.

FOURTH: That this stipulation and agreement shall be a part of the record on the Defendant's, Big Sespe Oil Company's, aforementioned appeal in this suit.

Dated: Los Angeles, California, April 1, 1921.

DUDLEY W. ROBINSON,

A. I. McCORMICK,

Solicitors for Defendant-Appellant, Big Sespe Oil Co.

"THEODORE MARTIN,

Solicitor for Complainant-Appellee, and for Intervening Complainant-Appellee.

Endorsed: Filed Apr. 2, 1921. Chas. N. Williams, Clerk; by R. S. Zimmerman, Deputy Clerk.

[TITLE AS BEFORE.]

Objection to Extension of Time.

The above named Complainant-Appellee and Intervening Complainant-Appellee hereby object to the proposed order of the Defendant-Appellant, proposing to extend the time of the said Defendant-Appellant within which it shall file its record on its appeal herein, on the ground that the time for filing the said record expired on the 4th day of February, 1921, and that said time has not been lawfully or properly extended.

Dated, March 23, 1921.

THEODORE MARTIN,

Solicitor for Complainant-Appellee and Intervening Appellee.

Endorsed: Received copy of the within objection this 24 day of Mar., 1921. D. W. Robinson, A. I. McCormick, Solicitors for Appellant.

Filed Mar. 23, 1921. Chas. N. Williams, Clerk; by P. W. Kerr, Deputy Clerk.

[TITLE AS BEFORE.]

Stipulation Regarding Record on Appeal.

IT IS HEREBY AGREED AND STIPULATED by and between William H. Cochran, Complainant, Intervening Complainant and Appellee, and Big Sespe Oil Company, a corporation, Defendant and Appellant,

through their respective undersigned Solicitors as follows, to-wit:

FIRST. That the captions of all pleadings and papers filed in this suit, except the "Bill of Complaint," and the "Petition to Intervene," and "Notice of Appearance" of Intervenor,—the captions of which shall be printed in full—shall be omitted from the printed record on the appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit; and that all other than these excepted pleadings and papers shall be headed with only a statement of their respective nature, or purpose, or subject; and that all pleadings and papers filed herein subsequent to the said "Bill of Complaint," and prior to the said "Petition to Intervene," shall be deemed to be headed with the same title of court and cause as in the said "Bill of Complaint:" that all pleadings and papers filed herein subsequent to the said "Petition to Intervene," and prior to the said "Notice of Appearance" of the Intervenor, shall be deemed to be headed with the same title of court and cause as in the said "Petition to Intervene"; and that all pleadings and papers filed herein subsequent to the said "Notice of Appearance" of the Intervenor, shall be deemed to be headed with the same title of court and cause as in the said "Notice of Appearance"; that all attorneys' cards on all pleadings and papers, and all endorsements on the backs or covers of all pleadings and papers, except, however, endorsements showing the service and filing thereof, shall be omitted from the said printed record;

SECOND: That the "Statement of The Evidence Under Equity Rule No. 75" as filed March 11, 1921, shall be printed in the said record on appeal so as to include and incorporate all the omissions, corrections and insertions indicated therein in pencil markings and script, but without showing the condition of the type-written portion thereof before any such omissions, corrections, or insertions were made and without showing what omissions, corrections and insertions in script were made therein by such pencil markings and script, and without showing pencil notations on the inside of the cover thereof or figures written in the margins;

That mechanical imperfections and self evident typographical errors in all the pleadings, papers, exhibits and documents may be disregarded and shall not be preserved or duplicated in said printed record on appeal;

THIRD: That the copy of the "Specifications of Reasons For Not Approving Proposed Interlocutory Decree," on which the Solicitor for the Complainant receipted for original under date of the 21st day of April, 1920, may be filed *nunc pro tunc* as of the said 21st day of April, 1920, and be deemed to have been regularly served on Complainant and filed in Court as of the last named day;

FOURTH: That it may be deemed for all purposes on appeal of the above entitled suit that at the hearing on December 1st, 1920, in the above entitled court, Solicitor for the Defendants duly and regularly objected and reserved exceptions to the signing, filing and

entry of the Final Decree in this suit on the ground that the same was partially based on the order allowing the intervention of William H. Cochran as Trustee; on the ground that Defendants had not had sufficient time within which to answer the said "Petition to Intervene"; on the ground that the Defendants were, by the signing and filing of the Final Decree, deprived of the right to a trial of the allegations of fact alleged by the "Petition to Intervene." It being further stipulated and agreed that at the hearing on the said "Petition to Intervene," on November 30, 1920, the said Solicitor for Defendants objected to the granting of the said Petition without their being allowed to file their Answer thereto; that the Court then and there held that no Answer to the said Petition was necessary or required unless the said Petition alleged new matter or things other than what was then already of record in the suit; that Defendants Solicitor then specified certain portions or allegations of the said Petition which were claimed to be such new matter, and the Court thereupon, of its own motion, ordered such designated portions and allegations to be stricken out of and from the said Petition, as more particularly appears in the Minutes of the Court on that day; and that the Court then and there also granted said Defendants until 10 o'clock A. M. of December 1st, 1920, within which to file Answer to the said Petition if they saw fit and desired so to do;

FIFTH: That it may be deemed for all purposes on appeal of the above entitled suit that the Solicitor

for the Defendants duly and regularly objected and reserved exceptions to the following named orders of the United States District Court in the above entitled action:

Order denying motion to dismiss;

Order entering Interlocutory Decree;

Order sustaining Complainant's objections to certain interrogatories, 29 and 34, in Defendant's Interrogatories to Complainant;

SIXTH: That the above named Court orally made an order prior to the filing of Complainant's Answers to Interrogatories sustaining the objections of Complainant to certain Interrogatories, which objected to interrogatories 29 and 34 of Defendant's Interrogatories to Complainant;

SEVENTH: That the pleadings, documents, orders, minutes, exhibits, and papers hereinafter listed and named, are a full and correct list of all the pleadings, documents, orders, minutes, exhibits and papers in the records in the above entitled suit, in the above entitled Court, relevant, material or germane, to any of the assignments of error on file in said Court in said suit;

EIGHTH: That the record on appeal to be certified by the clerk of the United States District Court, Southern District of California, Southern Division, to the United States Circuit Court of Appeals for the Ninth Circuit, in the above entitled suit, shall consist of only the next following described portion of the record in said District Court, to-wit:

Bill of Complaint.

Motion to Dismiss Bill of Complaint.

Notice of Motion to Dismiss Bill of Complaint.

Minutes of Proceedings of September 29, 1919, denying Motion to Dismiss Bill of Complaint.

Defendant's Interrogatories to Complainant.

Objections of Complainant to certain Interrogatories.

Answers to Interrogatories.

Answer of Defendants to Bill of Complaint.

Statement Of The Evidence and Stipulation of March 18, 1921, concerning Statement Of The Evidence, and order of March 18, 1921, settling Statement Of Evidence.

Complainant's objections to the filing of the Statement of the Evidence, filed March 18, 1921.

Specifications of reasons for not approving proposed Interlocutory Decree.

Interlocutory Decree.

Defendant's Statement of Account under Equity Rule No. 63.

Memorandum Opinion by Special Master to accompany his Report on accounting.

Special Master's Report on disclosure and accounting of Defendant, Big Sespe Oil Company.

Complainant's Exceptions to Report of Special Master.

Defendant's exception to report of Special Master.

Supplementary Statement of Defendant's Receipts and Disbursements.

Notice of Motion to Intervene.

Petition to Intervene.

Objections of Defendants to application of W. H. Cochran as Trustee, to Intervene.

Specifications of Reasons for not approving proposed Final Decree.

Minutes of Proceedings of November 30, 1920, on Motion to Intervene, including order striking out portion of Petition Of William H. Cochran, Trustee to Intervene.

Order granting leave to Intervene.

Notice of Appearance of Intervenor.

Minutes of Proceedings of November 30, 1920, on settlement of Master's Fees and settlement of Final Decree.

Minutes of Proceedings of December 1, 1920, on hearing on settlement, except only copy of the Final Decree.

Final Decree.

Waiver and Declaration of E. G. McMartin.

Order granting severance on Appeal.

Petition for Appeal.

Assignments of Error on Appeal of the Big Sespe Oil Company.

Order allowing Appeal and fixing Supersedeas Bond. Bond on Appeal, and approval thereof.

Citation on Appeal, and return thereof.

Order dated January 8, 1921, extending time for settling statement of the evidence and record on appeal to next term.

Order dated January 31, 1921, extending time for settling Statement to March 4, 1921.

Order dated March 2, 1921, extending time for settling Statement to March 24, 1921.

Complainant's Exhibits Numbers 1 to 13, both inclusive, and Defendant's Exhibits Numbers A. to K., inclusive, as admitted in Evidence by the District Court in above entitled suit;

The following designated Exhibits admitted in Evidence by the Special Master:

Complainant's Exhibits, 4, 6, and 8;

Defendant's Exhibits, B, C, D, and E.

Stipulation dated April 1, 1921, concerning portions of Plaintiff's Exhibit No. 14, admitted in evidence before the District Court, to be incorporated in the Record on Appeal.

Objections of Complainant and Appellee to the granting to Defendant-Appellant additional time for filing and docketing Record in the United States Circuit Court of Appeals for the Ninth Circuit, filed March 23, 1921.

This Stipulation regarding Record on Appeal.

Dated, April 1, 1921.

DUDLEY W. ROBINSON,

A. I. McCORMICK,

Solicitors for Defendant-Appellant, Big Sespe Oil Company, a corporation.

THEODORE MARTIN,

Solicitor for Complainant and Intervening Complainant-Appellees.

Endorsed: Filed Apr. 2, 1921. Chas. N. Williams, Clerk; by R. S. Zimmerman, Deputy Clerk.

IN THE DISTRICT COURT OF THE UNITED
STATES, SOUTHERN DISTRICT OF
CALIFORNIA, SOUTHERN
DIVISION.

WILLIAM H. COCHRAN, a citizen
of the State of New York,
Complainant,
and
WILLIAM H. COCHRAN AS
TRUSTEE FOR PACIFIC CRUDE
OIL COMPANY,
Intervening Complainant,
vs.
BIG SESPE OIL COMPANY, a
corporation formed, organized and
existing under and by virtue of the
laws of the State of California, and
a citizen and resident of the said
State; and
E. G. McMARTIN, Sheriff of the
County of Ventura, State of Califor-
nia, and also a citizen and resident of
the said State of California,
Defendants.

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing _____ pages, numbered from _____ to _____.

1 to inclusive, to be the Transcript of Record on Appeal in the above entitled cause, as printed by Appellant and presented to me for comparison and certification, and that the same has been compared and

corrected by me and contains a full, true and correct copy of the

Bill of Complaint.

Motion to Dismiss Bill of Complaint.

Notice of Motion to Dismiss Bill of Complaint.

Minutes of Proceedings of September 29, 1919,

Denying Motion to Dismiss Bill of Complaint.

Defendant's Interrogatories to Complainant.

Objections of Complainant to Certain Interrogatories.

Answers to Interrogatories.

Answer of Defendants to Bill of Complaint.

Statement of the Evidence and Stipulation of March 18, 1921, Concerning Statement of the Evidence, and Order of March 18, 1921, Settling Statement of Evidence.

Complainant's Objections to the Filing of the Statement of the Evidence, Filed March 18, 1921.

Specifications of Reasons for Not Approving Proposed Interlocutory Decree.

Interlocutory Decree.

Defendant's Statement of Account Under Equity Rule No. 63.

Memorandum Opinion by Special Master to Accompany His Report on Accounting.

Special Master's Report on Disclosure and Accounting of Defendant Big Sespe Oil Company.

Complainant's Exceptions to Report of Special Master.

Defendant's Exceptions to Report of Special Master.
Supplementary Statement of Defendant's Receipts
and Disbursements.

Notice of Motion to Intervene.

Petition to Intervene.

Objections of Defendants to Application of W. H.
Cochran as Trustee, to Intervene.

Specifications of Reasons for Not Approving Pro-
posed Final Decree.

Minutes of Proceedings of November 30, 1920, on
Motion to Intervene, Including Order Striking Out
Portion of Petition of William H. Cochran, Trustee,
to Intervene.

Order Granting Leave to Intervene.

Notice of Appearance of Intervenor.

Minutes of Proceedings of November 30, 1920, on
Settlement of Master's Fees and Settlement of Final
Decree.

Minutes of Proceedings of December 1, 1920, on
Hearing on Settlement, Except Only Copy of the Final
Decree.

Final Decree.

Waiver and Declaration of E. G. McMartin.

Order Granting Severance on Appeal.

Petition for Appeal.

Assignments of Error on Appeal of the Big Sespe
Oil Company.

Order Allowing Appeal and Fixing Supersedeas
Bond.

Bond on Appeal, and Approval Thereof.

Citation on Appeal, and Return Thereof.

Order Dated January 8, 1921, Extending Time for Settling Statement of the Evidence and Record on Appeal to Next Term.

Order Dated January 31, 1921, Extending Time for Settling Statement to March 4, 1921.

Order Dated March 2, 1921, Extending Time for Settling Statement to March 24, 1921.

Complainant's Exhibits Numbers 1 to 13, Both Inclusive, and Defendant's Exhibits Numbers A to K, Inclusive, as Admitted in Evidence by the District Court in Above Entitled Suit.

The Following Designated Exhibits Admitted in Evidence by the Special Master: Complainant's Exhibits 4, 6, and 8; Defendant's Exhibits B, C, D, and E.

Stipulation Dated April 1, 1921, Concerning Portions of Plaintiff's Exhibit No. 14, Admitted in Evidence Before the District Court, to be Incorporated in the Record on Appeal.

Objections of Complainant and Appellee to the Granting to Defendant-Appellant Additional Time for Filing and Docketing Record in the United States Circuit Court of Appeals for the Ninth Circuit, Filed March 23, 1921.

Stipulation Regarding Record on Appeal.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal amount to and that said amount has been paid me by the Appellant herein.

IN TESTIMONY WHEREOF, I have hereunto
set my hand and affixed the Seal of the Dis-
trict Court of the United States of America,
in and for the Southern District of Califor-
nia, Southern Division, this day
of , in the year of our Lord
One Thousand Nine Hundred and Twenty-
one, and of our Independence the One Hun-
dred and Forty-fifth.

CHAS. N. WILLIAMS,
Clerk of the District Court of the
United States of America, in and
for the Southern District of Cali-
fornia.

By

Deputy.

No. 3666.

IN THE
United States
Circuit Court of Appeals,
FOR THE NINTH CIRCUIT.

Big Sespe Oil Company, a Corpora-
tion,

Appellant,

vs.

William H. Cochran, a Citizen of the
State of New York, and

William H. Cochran as Trustee for
Pacific Crude Oil Company,

Appellees.

BRIEF ON BEHALF OF APPELLANT.

DUDLEY W. ROBINSON,
A. I. McCORMICK,
Attorneys for Appellant.

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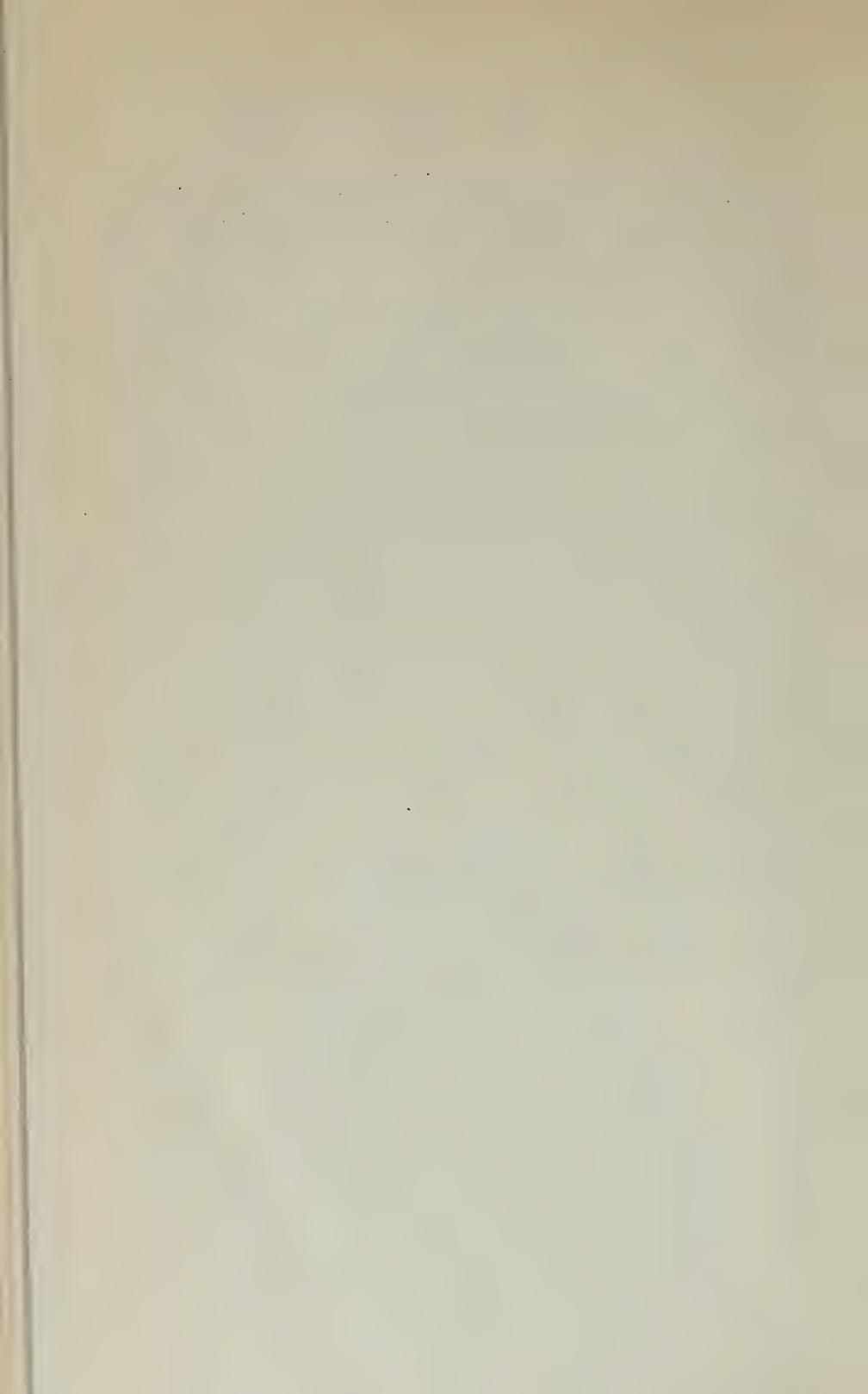


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IN THE
United States
Circuit Court of Appeals,
FOR THE NINTH CIRCUIT.

Big Sespe Oil Company, a Corpora-
tion,

Appellant,

vs.

William H. Cochran, a Citizen of the
State of New York, and

William H. Cochran as Trustee for
Pacific Crude Oil Company,

Appellees.

BRIEF ON BEHALF OF APPELLANT.

NOTE.—Figures herein in parentheses refer to transcript pages.

I.

ABSTRACT OF THE CASE.

INTRODUCTORY:

This is an appeal from a final decree in equity pursuant to a bill filed by an individual, William H. Cochran, as an alleged citizen of the State of New York,

against the appellant, Big Sespe Oil Company, a California corporation, and one E. G. McMartin, as sheriff of the County of Ventura, State of California, alleged citizens of the State of California. This appeal was taken and is prosecuted by Big Sespe Oil Company, a corporation, alone; an order of severance authorizing a separate appeal by this appellant having been obtained and entered in the lower Court (509).

This suit concerns and the final decree affects the title to, the right to the possession of, and the right to and the proper disposition of certain rents and profits of certain real property, situated in the County of Ventura, State of California, which has been operated for upwards of ten years in the development and production of oil thereon and therefrom.

The suit found its way into the Federal Courts solely by reason of the alleged diversity of citizenship of the parties thereto.

History of the Litigation and Circumstances Surrounding Same.

A brief statement of the facts out of which this controversy arose is here appropriate.

On March 30, 1914, and for several years prior thereto, this appellant was the owner of the real property the title to which is involved in this action. This property was on said last mentioned date an oil producing property, having four oil wells, with their machinery and equipment thereon (Test. Hornada. 132).

On said last mentioned date, for a consideration, part of which was money, paid by and for Pacific Crude Oil Company, a Delaware corporation, this appellant, by its two deeds (Plff's Ex's 5 and 6, 557-568 inc.), transferred and conveyed said real property, the grantee and transferee in said deeds being named and designated therein as "William H. Cochran, Trustee for Pacific Crude Oil Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware." The William H. Cochran in said deeds mentioned, is the same person who, in his individual capacity, is the complainant herein, and who, "as Trustee for Pacific Crude Oil Company, a corporation," is the intervenor herein.

No instrument in writing, other than said two deeds, creating or declaring or evidencing any trust in said real property appears anywhere in the record of this suit. Indeed, the evidence, as will be hereinafter shown, shows that there never was any such writing other than said two deeds.

Subsequent to the execution and delivery of said deeds, a suit was brought in the Superior Court of the State of California, in and for the County of Ventura, by this appellant as plaintiff against said Pacific Crude Oil Company, a corporation, and said William H. Cochran as Trustee for said Pacific Crude Oil Company, as defendants. On the 2nd day of January, 1917, a judgment was docketed and entered in said cause in favor of the plaintiff therein and against

Pacific Crude Oil Company, a corporation, *alone*, for the sum of seventeen thousand, six hundred forty and 50/100 dollars (\$17,640.50). (6, 80, 81.) Execution issued on said judgment on February 2, 1917, and on March 3, 1917, the sheriff of said County of Ventura, under and by virtue of said execution, sold to this appellant, and this appellant purchased for the sum of \$17,340.50 all the right, title, interest, claim and estate of said judgment debtor, Pacific Crude Oil Company, a corporation, of, in and to the real property described in complainant's bill and involved in this suit. On March 3, 1917, a Sheriff's Certificate of Sale was issued and delivered to this appellant as such purchaser. (See Shffs. Ctf. 553.)

One of the vital questions arising on this appeal is what, if any, title or interest did the Pacific Crude Oil Company own or possess in or to said real property at the time of this sale, and what, if any, title or interest did this appellant, as such purchaser, acquire by said execution sale to it of all the right, title or interest of said last named corporation in or to said property?

After said sale and the issuance and delivery of the sheriff's certificate of sale, the person who had been in charge of the property for the former owner took charge of the property on behalf of this appellant as the purchaser at said sale (Test. Hornada. 133). This appellant continued in said possession, operating the property and the wells thereon, making many repairs and improvements thereon at great cost to it, and dis-

posing of the oil produced therefrom up to the present time. The record fails to show that any force or threats whatever were used in taking this possession, and fails to show that any resistance or objection, of any kind, was offered to the taking of said possession or to the continuance thereof or the operation of said property by this appellant prior to the commencement of this suit. Indeed, during the whole of the year immediately succeeding the execution sale the complainant, Cochran, continuously discussed with the officers of appellant the operations and activities of appellant on the property, and made no objection whatever thereto, but acquiesced therein by requesting a statement of the moneys received and the expenses incurred in the operation of said property for the avowed purpose of ascertaining what moneys were necessary to redeem from said sale. (Test. Cochran, 122-124 inc.)

Furthermore, after the refusal to give such requested statement of receipts and expenditures to said Cochran on the ground of his lack of authority to demand the same, which occurred on or about March 1, 1918, within two days of the close of the period for redemption, no objection or protest against the continued possession and occupancy and operation of the said property by the appellant, and no demand for possession thereof was made during the period of about fifteen months which then elapsed before the commencement of the present action. The effect of this acquiescence and of these acts and conduct of the

complainant is of vital importance on this appeal, not only as relevant to the issue of laches as raised by the answer herein but also in its bearing upon the question as to whether this appellant was, in said possession and occupancy, a willful trespasser as was held by the Special Master and the lower Court. Notwithstanding the facts as above set forth, said Special Master and the Court held that this appellant in entering into such possession of said property and in operating the same was a *willful trespasser* (See Mem. Opin. Spec. Mast. 408; Inter. decree. Par's 6 and 8. 374-375), and enforced against it the strict and harsh rule which precludes such a trespasser from claiming or being allowed any credit whatever for services performed or expenses paid or incurred in connection with the operation of the property and the producing of the revenue therefrom, and compelled it to account for every dollar of the proceeds produced by its labor and expense without allowing any credits or deductions whatever, except the amount paid for State and County taxes on said property.

This holding was based solely on the finding by the Court (Inter. Dec. Par. 6. 374), that Pacific Crude Oil Company, as judgment debtor, had no right, title or interest in said property ~~by said execution sale~~, the legal title being in a stranger to the judgment, to-wit, William H. Cochran, as Trustee for Pacific Crude Oil Company, and that he alone was entitled to possess and operate the property, and the possession and operation thereof by appellant was, therefore, a willful

trespass and wrongful. In this conclusion, the Court in our opinion committed serious and fatal error.

As hereinbefore stated, the possession of defendant and its operation of the property continued uninterrupted and without opposition or objection after said execution sale. On March 1, 1918, two days prior to the end of the period allowed by the laws of California for the redemption of said property from the effect of said execution sale, there was served upon appellant, and also upon said sheriff, a written demand (copy attached to bill of complaint herein 27) signed, "Pacific Crude Oil Company by William H. Cochran, its attorney—William H. Cochran, as trustee for Pacific Crude Oil Company—William H. Cochran." This demand recites the issuance of the execution above referred to, the sale by the sheriff under said execution of March 3, 1917, the issuance of the certificate of sale, the receipt by this appellant of certain rents or profits from the said real property sold under execution, and that said property is subject to redemption under the laws of California and the aforementioned rents and profits so received by appellant are a credit upon the money necessary to be paid to make such redemption. These recitals are followed with a notice that under and pursuant to the provisions of section 707 of the Code of Civil Procedure of California and of the other laws applicable thereto, "Demand in writing is hereby made upon you, as the aforementioned purchaser, and also as judgment creditor, that you make, give and deliver a written and verified state-

ment of the amounts of such aforementioned rents and profits, thus received by you as aforesaid. Said statement should be served on William H. Cochran, care of Angelus Hotel, Los Angeles, California. Dated: Los Angeles, March 1, 1918."

This appellant neglected and refused to comply with said demand on the ground and for the reason that the said judgment debtor, Pacific Crude Oil Company, had not made or signed the demand or authorized its making, execution or service.

Nothing further appears to have been done in this connection until the 23rd day of July, 1918, when this appellant brought an action in the Superior Court of the State of California in and for the County of Ventura against the said sheriff of said County, in which action it sought and obtained a peremptory writ of mandate compelling the said sheriff to make, issue and deliver to this appellant as the purchaser at said execution sale his, said sheriff's, deed conveying the title purchased by this appellant to said real property at said execution sale to this appellant as such purchaser. On August 29, 1918, the said Superior Court duly and regularly made and entered its judgment in said proceeding, granting and awarding to this appellant a peremptory writ of mandate against said sheriff compelling the issuance and delivery of said aforementioned deed. The complainant herein was fully advised of, had personal knowledge of, and took part in said proceedings in said Superior Court, going so far as to consult with and advise the attorney for said sheriff

in said proceedings concerning the defense thereto. (Test. of Robt. M. Sheridan, 109-116 inc.; Test. of Cochran, 116-118 inc.) The record is silent as to any attempt by the complainant either as an individual or as trustee, or by said Pacific Crude Oil Company, to intervene in said action. On August 29, 1918, the said sheriff issued and delivered to the appellant his said sheriff's deed conveying to appellant all of the right, title and interest of said judgment debtor, Pacific Crude Oil Company, a corporation, of, in or to said real property.

The record fails to show anything further having been done by complainant or by said Pacific Crude Oil Company until July 2, 1919, when the present suit was commenced.

It will thus be noted that the right of this appellant to the possession and occupation of the property which was initiated as aforesaid by said execution sale on March 3, 1917, was not in any way objected to or interfered with, or even questioned, until July 2, 1919, a period of over two years, and notwithstanding the refusal to give said demanded statement of rents and profits on March 1, 1918, a period of sixteen months was allowed to elapse before the commencement of any suit or the definite assertion in any positive manner of any claims of right or interest in or to said real property or the rents and profits thereof by or for said Cochran, or by or for said Pacific Crude Oil Company.

THE PRESENT SUIT:

In the bill of complaint (4) this suit is entitled as one "To Redeem Real Property". It was brought by complainant, William H. Cochran, *in his own individual right*, as the assignee of the judgment debtor, Pacific Crude Oil Company, a corporation of the State of Delaware, for the purpose and with the object of allowing said assignee, in his own individual right, to redeem said property from the effect of the judicial sale by the sheriff of Ventura County under the writ of execution, based upon the judgment in favor of this appellant and against said Pacific Crude Oil Company, all of which has been hereinbefore referred to.

The complainant bases his right to sue for the relief demanded, viz., the right to redeem said property, with an incidental right to an accounting for the rents and profits thereof, solely upon a written assignment (Com's Ex. 8, 569), purporting to be executed by said Pacific Crude Oil Company after a time when it had forfeited its charter under the laws of Delaware (see Inter. Dec. 379). This assignment purports to assign to complainant, who was still the trustee for said company, *not any right, title or interest in the property involved*, but solely the right to redeem the same from the effects of said sale. The authority of the persons purporting to execute said instrument for said corporation to execute the same or to bind the company as well as the legal sufficiency of said assignment to vest in complainant the right to redeem said property

or to bring this suit was disputed and challenged in the lower Court and is involved in this appeal.

The suit was based primarily upon the provisions of the Code of Civil Procedure of the State of California relating to the redemption of real property sold under execution, and in particular upon the provisions of sections 700-707, inclusive, of said Code. Incidental to the main relief asked, the complainant, basing his rights upon said section 707 of the Code of Civil Procedure, sought to obtain an accounting and settlement of the rents and profits of said property received by this appellant during its possession of the same, subsequent to said sale; and also, and incidental to the main relief asked, complainant sought to have the deed of said sheriff to this appellant, as the purchaser at said execution sale, decreed to be void and cancelled.

A motion to dismiss was filed, argued and overruled, and an answer raising certain issues was thereafter filed. The case was tried on the equity side of the Court, by the Court, without a jury, with the result that an interlocutory decree was made and entered therein finding and adjudging, among other things, that at the time of the docketing of the judgment in said action in the Superior Court of said Ventura County, in favor of this appellant and against said Pacific Crude Oil Company, and also at the time of said execution sale, to-wit, March 3, 1917, the legal title to the real property sought to be redeemed from the effect of said sale, "was vested in and was held by William H. Cochran, as trustee for Pacific Crude Oil

Company, the aforementioned judgment debtor, and had been continuously so vested and held since the 30th day of March, 1914; and that at the said times, the said judgment debtor, Pacific Crude Oil Company, neither had nor possessed any estate or any interest in the said real property, but had and possessed solely the right to enforce the provisions of the trust in connection therewith against the said Trustee." (374-375)

This interlocutory decree further found and adjudged that complainant was entitled to the relief he sought, namely, the right to effect the redemption of said real property from the effect of said sheriff's sale, and the matter was referred to a Special Master for an accounting and disclosure by this appellant, as such purchaser, of such moneys, rents and profits as it had collected and received from the said real property since March 3, 1917.

The matter was heard by said Master and his report, subsequently made and filed with the Court, found and adjudged the gross receipts obtained and received by this appellant from the operation of said property and the sale of oil therefrom, and recommended that it should account for the whole of said gross receipts. Said Master in his report and findings further found that appellant in entering into possession of said real property and in operating the same was a *wilful trespasser* and therefore should account for every dollar received by it from or out of the operation of said property, without any credit or deduction whatever (except the amount paid for State and County taxes),

notwithstanding the fact that said Master also found that this appellant had expended various and large sums of money in the operation of said property and in the production of the oil therefrom, the sale of which oil resulted in the said gross proceeds above mentioned.

The report, findings and recommendations of said Master were subsequently received and approved in their entirety by the said Court. Said report and findings, as approved, and as finally confirmed in the final decree herein, stated that the gross proceeds received by appellant from the operation of said property during said possession, and for which it must account, amounted to \$24,054.11; that the amount required to redeem from said execution sale was \$20,210.27, leaving a surplus or balance of \$3,843.64 in the possession of appellant collected and received by it without right and for which it must account and pay over to the Clerk of the District Court within ten days from the entry of the said decree.

On the day set for the signing of the final decree and pursuant to a notice theretofore given, the complainant, not in his personal capacity, *but as trustee for the Pacific Crude Oil Company, a corporation*, was allowed to and did, over the objection of appellant, file his complaint of intervention in said case, and after the filing thereof, the final decree was signed and entered. In and by said final decree the court adjudges and decrees that the redemption sought for

has already been made; that appellant has no right, title or interest in or to the real property, or the fixtures and improvements thereon, or the personal property used in connection with the operation thereof; that the intervenor is entitled to the possession of said property, real and personal, and appellant is commanded to quit and deliver the said possession to said intervenor, and is also commanded to pay to the Clerk of said District Court the sum of \$3,980.12 (the surplus as found by said Master, with interest) within ten days from the date of the entry of said decree; and appellant is also enjoined from claiming any right, title or interest in or to the property.

The bill expressly alleges that the jurisdiction of the Federal Court was based solely upon the diversity of the citizenship of the parties thereto. The bill alleges and the answer denies that complainant was a citizen of the State of New York. No evidence was introduced for the direct purpose of proving this issue. The evidence fails to show diversity of citizenship between the parties. Indeed, the only reasonable inference to be drawn therefrom is that both complainant and defendants were citizens of the State of California. Hence the lower Court had no jurisdiction.

The Questions Involved.

The questions involved which appellant purposes to argue in this brief are as follows:

POINT 1.

That the Pacific Crude Oil Company at the time of the execution sale owned the complete equitable title to the property and William H. Cochran was the mere trustee holding the naked legal title. Therefore, appellant, as the purchaser at said sale acquired the complete equitable title to the property, subject only to the right of said Pacific Crude Oil Company to redeem in the manner and within the time authorized by the laws of California. For this reason the interlocutory decree, the Master's report and the final decree, which are all to the contrary, are erroneous.

POINT 2.

That appellant as purchaser at said execution sale was entitled to the credits claimed by it on the accounting for expenses incurred in the maintenance and operation of the property; and that appellant was not chargeable with interest on the amounts received by it as proceeds of the oil sold; and the ordering of the monthly rests and monthly deductions from the amount required to redeem was improper. Holding of the court and master that appellant was a willful trespasser in the possession and occupation of said property and, as such, subject to the law governing willful trespassers was erroneous.

POINT 3.

The attempted demand for the statement of rents and profits made March 1st, 1918 was invalid and ineffectual for any purpose and that no authority for making such demand was established by the evidence.

POINT 4.

The purported assignment from the judgment debtor to complainant is inherently insufficient and ineffectual to transfer the right to redeem. Complainant was not the successor in interest to the judgment debtor in or to any part of the property.

POINT 5.

Said purported assignment is invalid because of the fiduciary relations existing at this date between the alleged assignor and assignee.

POINT 6.

Said purported assignment was not legally executed and the Pacific Crude Oil Company was not bound thereby.

POINT 7.

The Court had no jurisdiction because of the lack of diversity of citizenship between the parties.

A—Burden of proof was on complainant.

B—The evidence shows that complainant was a citizen of the State of California, of which state the defendants were citizens.

POINT 8.

The complainant or his assignor having for a period of sixteen months after the expiration of the period of redemption taken no steps to redeem, is precluded from maintaining this action by reason of laches.

POINT 9.

The interlocutory decree rendered herein in its terms is inconsistent with the Master's report as well as with the final decree confirming the same. The latter confers upon the Pacific Crude Oil Company and the complainant as its assignee, the right to redeem while the interlocutory decree specifically declares that the Pacific Crude Oil Company has not and never had any right, title or interest in said property. If this be true it never possessed the right to redeem and therefore could assign no such right.

POINT 10.

The intervention of William H. Cochran as trustee was improperly allowed and this allowance was ineffectual for any purpose.

A—The intervention was too late.

B—No sufficient opportunity given appellant to answer complaint of intervention.

C—If any issues raised thereby appellant entitled to trial by jury thereon.

D—In any event the intervenor had no interest in the subject matter of this action.

POINT 11.

The Court erred in restraining appellant from removing certain personal property belonging to said appellant from the property involved in this action.

POINT 12.

The Court erred in that portion of the final decree ordering appellant to deposit in court the sum of \$3,-843.84, together with interest thereon, as the alleged surplus of profits over amount required to redeem. Upon a proper accounting there was no surplus and there was no party before the court who was entitled to any surplus.

ASSIGNMENT OF ERRORS:

For the convenience of the Court we here print the assignments of error filed with the petition for the allowance of appeal, upon which appellant here relies and the questions above stated arise.

1. The Court erred in not holding that the bill of complainant, William H. Cochran, fails to state a cause of action in equity against the defendant Big Sespe Oil Company.

4. The Court erred in receiving the following testimony of the witness William H. Cochran upon direct examination, offered by and on behalf of the complainant, to-wit:

“By Mr. Martin:

Q. Please state what, if any, business relations or otherwise you have had with the Pacific Crude Oil Company mentioned in the pleadings in this case?

Mr. Robinson: That is objected to as calling for a conclusion of the witness. If it is intended to call for transactions with the corporation, the existence of the proper officers with whom he could transact business, it assumes that he transacted business with the corporation. He might say that he transacted business with the corporation and it might not be business with the corporation at all. He might transact business with a person purporting to act for the corporation, but there is no foundation laid to show that any person had authority to act for the corporation in transacting business with him.

The Court: The objection is overruled.

A. Well, to fully explain my relationship with the Pacific Crude Oil Company I have to go back to February, 1914. I was coming to California—particularly Los Angeles—in February, 1914—

The Court: The question may be too broad. I don't want to know anything about it except what may relate to this case.

Q. By Mr. Martin: Well, I will add to that question: Are you acquainted with the officers of the Pacific Crude Oil Company?

A. I was acquainted with the officers who were officers at the time of this assignment, if that is what you refer to.

Q. Yes, sir.

A. I was; yes, sir.

Q. Do you know who they are?

A. I know who they were then; I don't know who

they may be now. I have no reason for knowing they have changed.

Q. Do you know who they were at the time of the execution of this instrument?

A. I do.

Q. The last instrument offered in evidence, this assignment to you.

A. I do.

Q. Will you tell the Court who they were.

Mr. Robinson: Objected to as calling for a conclusion of the witness and not the best evidence.

The Court: Well, strictly speaking, the records of the company would be the best evidence. I will let the witness testify who was acting as president of the company at the time of the execution of this instrument in June, 1919.

A. At that time George Van Hook Potter was president, and I think it is C. Duplaine was secretary.

Q. By the Court: Was anybody else acting as president or secretary at that time, of this corporation, or pretending or claiming to be?

A. No, there was not.

Q. Are you familiar with the seal of the corporation?

A. I am.

Q. How long have you known it?

A. Well, I have actually seen impressions of it for some—early in 1914, and then later on I repeatedly saw the actual seal.

Q. By Mr. Martin: What, if any, knowledge have you as to the execution of that instrument—this assignment to you of the right of redemption by the Pacific Crude Oil Company, by the officers of that Company?

Mr. Robinson: That is objected to as assuming a fact not in evidence, and calling for a conclusion of the witness, and on the ground that no proper foundation has been laid to show who the officers of the corporation were.

Mr. Martin: I asked him what, if any, knowledge he had.

The Court: The objection is overruled.

Mr. Robinson: Exception.

A. I saw both Mr. Potter and Mr. Duplaine sign and execute that instrument, and I saw the seal attached to it, and I also heard it acknowledged, and it was then delivered to me.

Q. By the Court: That is an impression of the seal of the corporation attached to this instrument, is it?

A. Yes, sir; it is.

Mr. Robinson: Will Your Honor grant us an objection and exception to the question as to the authenticity of the seal?

The Court: Certainly; the objection will be overruled.

Mr. Robinson: Exception."

5. The Court erred in receiving the following testimony of the witness William H. Cochran upon direct examination, offered by and on behalf of the complainant, to-wit:

Q. Who were the officers of this Pacific Crude Oil Company at the time the suit was commenced in 1914, as you have stated?

The Court: The Ventura suit?

Mr. Martin: Yes, sir.

Mr. Robinson: That is objected as not the best evidence, and as incompetent, irrelevant and immaterial.

The Court: The objection is overruled.

Mr. Robinson: Exception.

A. At that time C. C. Duplaine was president, and a gentleman by the name of Tibbets was secretary and treasurer, and the general counsel for the company was Charles H. Burr, and those officers were directors of the company, and my recollection is that the other directors at that time were a Mr. Jackson and a Mr. Taylor."

6. The Court erred in receiving the following testimony of the witness William H. Cochran upon direct examination, offered by and on behalf of the complainant, to-wit:

"By Mr. Martin:

Q. And who were acting as the officers of this company, the said company, on March 1, 1918?

Mr. Robinson: Objected to as calling for a conclusion of the witness.

The Court: The objection is overruled.

Mr. Robinson: Exception.

A. I stated this morning who they were. I stated this morning that the president was Mr. George Van Hook Potter and the secretary C. C. Duplaine, the two gentlemen who executed this assignment on the 11th of June."

7. The Court erred in receiving in evidence the following document marked in the records as Plaintiff's Exhibit No. 8, and being in words and figures as follows:

(See this document fully set forth verbatim in Plaintiff's Exhibit 8, admitted by District Court.)

8. The Court erred in finding and decreeing that ever since the sale at public auction on the 3rd day of March, 1917, as found and decreed in the second paragraph of the interlocutory decree in the above cause, of all the estate, right, title and interest which the Pacific Crude Oil Company, a corporation, in said paragraph described as the judgment debtor, had of, in and to the certain real property in said second paragraph described, all and every the aforesaid estate, right, title and interest of the said judgment debtor Pacific Crude Oil Company of, in and to the said real property ever has been and still is, as found and decreed in paragraph fifth of said interlocutory decree, subject to redemption by the said judgment debtor or its assignee, from the aforesaid sale thereof under execution.

9. The Court erred in not finding and decreeing that ever since the 4th day of March, 1918, the Pacific Crude Oil Company as judgment debtor did not have, nor did its assignee have any right of redemption of the property in the bill of complaint and in the second paragraph of the interlocutory decree described as having been sold on the 3rd day of March, 1917.

10. The Court erred in not finding and decreeing that the complainant William H. Cochran acquired and has by assignment from the Pacific Crude Oil Company, a corporation, or otherwise, no right of redemption of the aforesaid property from the aforesaid

execution sale to the defendant Big Sespe Oil Company.

11. The Court erred in finding and decreeing that such moneys, rents and profits as have been collected and received by the said purchaser Big Sespe Oil Company were, under the laws and statutes of the State of California relative thereto, a credit upon the money to be paid to redeem such property from such sale.

12. The Court erred in not finding and decreeing that no moneys except rents and profits collected and received by the said purchaser Big Sespe Oil Company were or ever have been a lawful or proper credit upon the moneys required to be paid to redeem such property from such sale.

13. The Court erred in finding and decreeing that before the expiration of the period of time ordinarily allowed under the laws of the State of California on redemption of such property, to-wit, within twelve (12) months after the aforesaid execution sale on March 3, 1917, the said debtor Pacific Crude Oil Company demanded in writing of the said purchaser Big Sespe Oil Company a written and verified statement of the amounts of rents and profits collected and received by said purchaser from said real property.

14. The Court erred in finding and decreeing that said written demand for a statement of the rents and

profits was made by, or with due or proper authority from, the party, if any, entitled to redeem.

15. The Court erred in finding and decreeing that said demand for a statement of the rents and profits was in due and legal form and as prescribed and required by the said laws and statutes or that in all particulars it was duly, properly, legally and equitably made.

16. The Court erred in finding and decreeing that by reason of the failure and refusal of the defendant Big Sespe Oil Company to give such demanded statement of the rents and profits, the right of redemption in said interlocutory decree mentioned and the period of time for such redemption was extended for and until the expiration of a further period of time which had not expired at the time of the commencement of this suit.

17. The Court erred in finding and decreeing that by that certain instrument in writing bearing date the 11th day of June, 1919, and hereinabove set out in Assignment of Error No. 7, the said judgment debtor Pacific Crude Oil Company sold, assigned, transferred and conveyed to the complainant William H. Cochran, its certain right of redemption in said interlocutory decree described and adjudged.

18. The Court erred in finding and decreeing that said instrument bearing date the 11th day of June, 1919, purporting to be an assignment from the said

judgment debtor, Pacific Crude Oil Company, to the complainant William H. Cochran, of its said right of redemption, was made, executed and delivered with due, proper and legal authority, or by any one having legal power or authority to execute the same.

19. The Court erred in finding and decreeing that the said instrument dated the 11th day of June, 1919, purporting to be an assignment from the said judgment debtor Pacific Crude Oil Company to the complainant William H. Cochran of its said right of redemption was and is sufficient to and actually did assign, transfer and convey unto the said William H. Cochran, the complainant in this suit, in his own right and for his own personal use and benefit, the aforesaid redemption and right of redemption in said interlocutory decree found and adjudged; and that thereby said William H. Cochran became lawfully seized and possessed of the right to make such aforementioned redemption in the form and manner prescribed by the laws and statutes of the State of California, in such cases made and provided, and for his own use and benefit.

20. The Court erred in finding and decreeing that since the said 11th day of June, 1919, the complainant herein, William H. Cochran, ever has been or still is entitled to make such aforementioned redemption or to institute and maintain this suit for the enforcement thereof.

21. The Court erred in finding and decreeing that this suit was commenced within the time limited for such suits by the statutes of said State of California relative thereto.

22. The Court erred in finding and decreeing that neither complainant nor said Pacific Crude Oil Company has been or is guilty of any laches, either at law or in equity, in the commencement of this suit, or in the making of the aforesaid redemption.

23. The Court erred in finding and decreeing, as set forth in paragraph thirteenth of said interlocutory decree, that a certain instrument in writing in said paragraph described, wherein and whereby E. G. McMartin, sheriff of the County of Ventura, State of California, purported to grant, bargain and sell unto the aforesaid purchaser Big Sespe Oil Company, all the estate, right, title and interest of the said judgment debtor Pacific Crude Oil Company, of, in and to the aforesaid real property in the bill of complaint, and in said interlocutory decree described, was and is void *ab initio*, and that the aforesaid purchaser Big Sespe Oil Company took nothing thereby on the ground that the same was made and given before the expiration of the period of time for the aforesaid redemption as hereinbefore found and adjudged.

24. The Court erred in finding and decreeing that said instrument or deed from said sheriff shall be surrendered, cancelled and destroyed.

25. The Court erred in finding and decreeing that after the forfeiture of its charter and during the term of three years thereafter, said Pacific Crude Oil Company, under and pursuant to the statutes of the State of Delaware, retained its officers and directors with all the authority theretofore possessed by them and each of them, and in not finding and holding that after the forfeiture of its charter and by reason of such forfeiture, and at the date of the execution of the aforesaid instrument of assignment dated June 11, 1919, the said Pacific Crude Oil Company, as a corporation, had not, nor had the officers of said Pacific Crude Oil Company, nor had the directors thereof, any of the authority thertofore possessed by them or either of them in connection with the affairs of said corporation, and particularly that they had not, nor did any of them have, any power or authority to execute or deliver the said instrument or assignment dated June 11, 1919, and hereinabove set out.

26. The Court erred in finding and decreeing that said Pacific Crude Oil Company was not required by any law or statute of the State of California to file in the office of the Secretary of State of said State of California, a certified copy of its articles of incorporation, or of its charter or of the statute or statutes of legislative or executive or governmental act or acts creating it, or any designation of any person to receive service of process for it in the said State of California.

27. The Court erred in finding and decreeing that said Pacific Crude Oil Company never did do any business in the said State of California, and that it never did enter the said state for the purpose of doing any business therein within the meaning, intent and purpose of the statutes of said State of California in such cases made and provided; and further and consequently, that said Pacific Crude Oil Company at no time was subject to the said statutes or any of them, nor to any of the requirements, penalties or disabilities thereby created and imposed.

28. The Court erred in finding and decreeing that the moneys collected and received by defendant Big Sespe Oil Company from its sales of crude petroleum from the above mentioned real property constitute rents or profits which said defendant has received from the said property since March 3, 1917, and in finding and decreeing that such moneys are to be credited upon the money required to be paid by complainant to make and effect a redemption adjudged to him as in said interlocutory decree set forth.

29. The Court erred in not finding and decreeing that the moneys collected and received by the defendant Big Sespe Oil Company from its sales of crude petroleum from said above mentioned real property were merely the basis of computing the rents and profits from the said real property from which should be deducted the expenses of operating said property,

in order to estimate the amount of profits or rents received by said defendant.

32. The Court erred in finding and decreeing that the unpaid item of six hundred dollars (\$600.00) for back pay to one Hornada mentioned and described in the report of the Special Master in Chancery in said cause, should not be credited to the defendant Big Sespe Oil Company as an expense incurred in the operation of said real property and to be deducted from the gross receipts in estimating the amount of rents and profits received, and that the evidence fails legally to show an agreement to pay the same to said Hornada.

33. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company was a willful trespasser upon the property in question and is not entitled to be reimbursed by complainant for expenditures for repairs and operations of said property, and in not finding that such expenditures should be deducted as proper charges and expenses in the operation of said property by said defendant.

34. The Court erred in finding and decreeing that the sum of eight hundred ninety-six and 50/100 (\$896.50) dollars paid to one Clampitt as president and manager of defendant company, should not be credited as an expense included in the operation of said property and to be deducted from the gross receipts in estimating the rents and profits.

35. The Court erred in finding and decreeing that the erection of new derricks and replacing of pumping machinery and equipment were not necessary repairs, but were replacements voluntarily and unnecessarily made by the defendant Big Sespe Oil Company upon the said property.

36. The Court erred in finding and decreeing that the new water system upon said property was not essential to the operation thereof, and that the expense involved in putting in this water system was not a necessary expense.

37. The Court erred in finding and decreeing that the road described in subdivision "d" of paragraph VIII of the report of the Special Master in Chancery in said cause on pages 18 and 19 of said report was not a necessary repair nor essential nor necessary to the producing or marketing of oil extracted therefrom by the defendant Big Sespe Oil Company.

38. The Court erred in finding and decreeing that the installing of a new water system, the reconstruction of the old road, the placing of additional gauging tank on the property, the erection of the new derrick at well No. 1 and the drilling of well No. 5, were not necessary to the preservation of the property or the producing or marketing of oil.

39. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company is not the owner

of the personal property upon the real estate involved in this action.

40. The Court erred in not finding and decreeing that the defendant Big Sespe Oil Company was and is the owner of said personal property, and that the use thereof entered into the production of the profit from said realty and said defendant should receive credit therefor.

41. The Court erred in finding and decreeing that the defendant Big Sespe Oil Company should be charged with interest at the rate of seven (7%) per cent per annum on the proceeds from the sale of oil from the time of their several respective payments.

42. The Court erred in finding and decreeing that the defendant should not be credited with any interest after April 1, 1918, upon the judgment on account of which redemption is sought to be made.

43. The Court erred in finding and decreeing that monthly rests in charging interest upon receipts should be made in taking the account adjudged in this action.

44. The Court erred in not finding and decreeing that it was a custom in the district where the real property in question is situated to fix the rental value of oil property at one-sixth ($1/6$) royalty of the gross production, and that the only proper charge against the defendant Big Sespe Oil Company to be credited upon redemption is not to exceed one-sixth ($1/6$) royalty.

45. The Court erred in not finding and decreeing that the defendant Big Sespe Oil Company, for the purposes of the accounting adjudged in this action, should not be treated as a trespasser, but should account, if at all, only for the rents and profits attributable to or actually received from the use of the realty.

46. The Court erred in approving and confirming the report of the Special Master in Chancery in the above-entitled cause in each and all of the respects and for each and all of the reasons heretofore allowed in assignments of error numbers 35 to 55, inclusive, and in overruling each and all of the exceptions of defendant Big Sespe Oil Company to the report of said Special Master.

47. That the Court erred in finding and decreeing that the total amount of the several sums of money which the defendant Big Sespe Oil Company is entitled to receive and be paid upon the redemption of the real property in question is the sum of \$20,210.27 and that such sum is the amount of the redemption money required to be paid to said Big Sespe Oil Company upon and to make and effect the said redemption; and in not finding that the sum which the said defendant Big Sespe Oil Company is entitled to receive and be paid upon such redemption is the sum of the original judgment, the sum of \$17,340.50, being the amount for which said real property was sold at execution sale on the 3rd day of March, 1917, together

with interest at the rate of one (1%) per cent per month on said sum until said redemption is made.

48. The Court erred in finding and decreeing that the amount of profits collected and received by the defendant Big Sespe Oil Company from said property is the sum of \$24,054.11, and in not finding that the total amount of the profits so collected and received by said defendant is the sum of \$4,008.33, being a one-sixth ($1/6$) royalty upon the gross sales of crude petroleum from said property.

49. The Court erred in finding and decreeing that out of and from and by the said adjudged profits the said defendant Big Sespe Oil Company has been fully paid the aforesaid total redemption money, namely, viz., \$20,210.27, so required to be paid to it and upon and to make and effect the aforesaid redemption.

50. The Court erred in finding and decreeing that the money required to redeem said property and to which the defendant Big Sespe Oil Company, a corporation, was entitled, has been as alleged in said final decree or otherwise or at all fully paid, satisfied or discharged; and that the defendant Big Sespe Oil Company is or should be required to make, execute or deliver to the complainant William H. Cochran, a certificate of such aforementioned redemption in the form specified in said final decree or at all.

51. The Court erred in finding and decreeing that by such adjudged payment, or by such made and

effected redemption, mentioned in and adjudged in said final decree, all or any of the effect of said execution sale of March 3, 1917, was or is terminated.

52. That the Court erred in finding and decreeing that the complainant William H. Cochran was or is the assignee of said Pacific Crude Oil Company on the said sale, and further erred in finding and decreeing that as such assignee, or in any other capacity or at all, the said complainant was or is restored to all or any of the estate and rights of said Pacific Crude Oil Company, sold or on by said sale, or that as such adjudged assignee or in any other capacity, or at all, said William H. Cochran was entitled to or did effect a redemption of any estate or rights of said Pacific Crude Oil Company, of in or to the whole or any part of said real property described in the bill of complaint herein.

53. The Court erred in holding and decreeing that this defendant Big Sespe Oil Company, after the payment of the redemption money or at any time, had or still has or holds in its hands a balance or surplus from the said collected and received profits amounting to the sum of \$3,843.84, or any other sum whatever; and the Court erred in further holding and decreeing that this defendant Big Sespe Oil Company had no right to collect, receive and retain or hold said adjudged surplus profits or any part thereof, and in finding and decreeing that said defendant has not any right, interest or claim thereto; and the Court further

erred in ordering and decreeing that this defendant is required to or shall pay over to the Clerk of the District Court for the Southern District of California the sum of \$3,980.12, or any other sum.

54. The Court erred in finding and decreeing that that certain deed from E. G. McMartin, sheriff of the County of Ventura, State of California, to the defendant Big Sespe Oil Company described in paragraph seventh of the final decree, should be set aside, annulled and held for naught, and in setting aside, annulling and holding it for naught; and the Court further erred in ordering and decreeing that the defendant surrender up the said deed unto the Clerk of this Court to be by him cancelled and destroyed.

55. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company, its officers, employees, agents and attorneys, and each and every of them, or any of them, should be forever enjoined and restrained, and in enjoining and restraining them or any of them from asserting or setting up any claim or right whatsoever of any estate, right, title or interest in or to the premises described in the said instrument or in or to the personal property, buildings, machinery, equipment and fixtures therein or thereon, or to any of the income, rentals or profits from the said real property since the said 3rd day of March, 1917, by virtue of said execution sale and deed made in pursuance thereof.

56. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company, its officers, employees, agents and attorneys and each and every of them, or either or any of them, should be forever or at all enjoined and restrained, and in enjoining and restraining them or any of them from asserting or setting up any claim or right whatsoever of any estate, right, title or interest in or to the personal property, machinery and equipment upon the real property described in the bill of complaint herein.

57. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company shall forthwith or at all quit or surrender up to the intervening complainant herein, William H. Cochran, as trustee for Pacific Crude Oil Company, the aforementioned real property, together with all the personal property, buildings, machinery, equipment and fixtures therein and thereon.

58. The Court erred in ordering and decreeing that the defendant Big Sespe Oil Company shall forthwith or at all quit and surrender up unto the intervening complainant herein, William H. Cochran, as trustee for Pacific Crude Oil Company, the aforementioned personal property, machinery and equipment on said aforementioned real property, or any part or portion of any of said personal property, machinery or equipment.

59. The Court erred in ordering and decreeing that the complainant William H. Cochran have and recover

of the defendant Big Sespe Oil company his costs of this suit, or any costs at all; and the Court erred in ordering and decreeing that the compensation allowed to the Special Master or any compensation to said Special Master be charged against or borne by the defendant Big Sespe Oil Company, or that said Special Master shall be entitled to or have an attachment against the said defendant Big Sespe Oil Company for or on account of such or any allowed compensation, or at all.

60. The Court erred in allowing William H. Cochran, as trustee for Pacific Crude Oil Company, to intervene in said action, and in allowing and granting the petition of said William H. Cochran, as such trustee, for leave to intervene therein, and the Court erred in not finding and decreeing that the said petition for leave to intervene did not state facts sufficient to entitle said petitioner to intervene in said cause, and the Court erred in not sustaining the objections of the defendants to said petition for leave to intervene.

61. The Court erred in entering the final decree upon the complaint in intervention of the intervening complainant, William H. Cochran, as such trustee, without trial of the issues presented by his said complaint in intervention, and in making and entering a final decree based in part upon said complaint in intervention and granting to the said William H. Cochran, as such trustee, relief prayed for in said complaint, or any relief at all in this action.

62. The Court erred in finding and decreeing that the Pacific Crude Oil Company, a corporation, ever at any time had or possessed the right to redeem the real property described in the bill of complaint herein from the said execution sale thereof to this defendant mentioned and described in said bill of complaint; and the Court further erred in holding and decreeing that said Pacific Crude Oil Company ever at any time, by virtue of the purported assignment from said Pacific Crude Oil Company to said complainant, hereinbefore set forth and described, or by any other means or at all, sold or assigned or transferred or conveyed any right or privilege to redeem said property from said execution sale, and in finding and decreeing that said William H. Cochran, complainant, at any time had or possessed the right to redeem said property or any part thereof, from said sale or had at any time the right to commence or maintain this action.

63. The Court erred in making, in rendering and in entering the final decree and interlocutory decree in this cause, because and for the reason that the court, being a United States District Court, had no jurisdiction to render said final decree or any decree in said cause other than a decree dismissing the bill of complaint herein.

64. The Court erred in not finding and decreeing that it had no jurisdiction of this action or the subject matter thereof, and in not finding and decreeing that it had no jurisdiction to make, render or enter the

interlocutory or final or any other decree herein other than a decree dismissing the bill of complaint in said cause.

65. The Court erred in not finding and decreeing that it had no jurisdiction of this action or of the subject matter thereof, and in not ordering and decreeing a dismissal of the bill of complaint herein on the ground and for the reason that the evidence was insufficient to show that the cause of action was one between citizens of different states of the United States.

Assignments 30 to 49, inclusive, relate to rulings and finding of the Special Master set forth in his report (419 to 459). This entire report was approved and confirmed by the Court without alteration (360). This report was duly excepted to by appellant by its written exceptions (463 to 469, inclusive), eighteen in number, which specifically excepted to each of the matters involved in assignments 30 to 49, inclusive, above mentioned, and also generally excepted (469) to the basis and assumption upon said Master's report was founded, viz., that this appellant was a trespasser in the possession and occupation of said property and should be held accountable as such.

ARGUMENT.

POINT 1.

The Pacific Crude Oil Company at the Time of the Execution Sale Had all the Equitable Interest and Title in and to the Property Sold and William H. Cochran as Trustee Had No Interest Therein but Was Merely the Holder of the Naked Legal Title.

Based on Answer, Para's IV and V (56), and XVI (64); Assignments of Error, 11 (517), 18 to 20 inc. (519), 23 (520), 32 (523), 33 (523), 34 to 38 inc. (524), 41 to 43 inc. (525), 45 and 46 (526), 47 to 51 inc. (526-527); also upon Inter. Dec. Pars. sixth and eighth (374-375), thirteenth (378); Final Decree, Para's first to eight inc. (498 to 503 inc.).

The interlocutory decree of the District Court (374) as well as the report of the Master (401), as confirmed by the Court, and the final decree rendered herein (498), rest upon the assumption that the judgment debtor, Pacific Crude Oil Company, at the time of the execution sale on March 3, 1917, possessed no estate or interest in the real property sold at such sale. The interlocutory decree declares in paragraph "sixth" thereof (374), "that at the said times, the said judgment debtor, Pacific Crude Oil Company, neither had nor possessed any estate or any interest in the said real property, but had and possessed solely the right to enforce the performance of the trust in con-

nection therewith, against the said Trustee." This finding necessarily presupposes the existence of an express trust between the Pacific Crude Oil Company and its trustee, William H. Cochran, as the *cestui que* trust, in no other class of trusts becomes divested of all his estate and interest in the trust property. It evidently follows the provision of the statute of California pertaining to the effect of an express trust. Section 863 of the Civil Code of the State of California reads:

"Except as hereinafter otherwise provided, every express trust in real property, valid as such in its creation, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust."

An express trust to real property, however, pursuant to the laws of the State of California, wherein the property in question is situated, can be established only by a trust agreement in writing and in no other manner. Briefly speaking, the laws of the State of California in reference to trusts in relation to real property are as follows: Section 847 of the Civil Code of said state declares that "Uses and trusts in relation to real property are those only which are specified in this title." Section 852 of said Code provides: "No trust in relation to real property is valid unless created or declared: 1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing; 2. By the instrument under

which the trustee claims the estate affected; or, 3. By operation of law.” The first two of these modes constitute the means whereby all express trusts in land are created and section 857 of the said Civil Code expressly specifies the purposes for which an express trust may be created and which is to be evidenced by the instrument creating such trust. A valid trust in relation to real property can only be created by operation of law or declared by an instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same. (Sec. 1971, Code of Civil Procedure of Cal.)

It is not contended in the case at bar that an instrument in writing declaring the trust was executed (see Interrogatories 13 and 20, Tr. pp. 37-38, and answers thereto, Tr. pp. 46-47), but the trust relation arose from the following admitted state of facts as disclosed by the testimony of the complainant himself. He testified as to the circumstances attending the purchase of the property involved herein and the taking of the title thereto in his name as follows:

“I was coming to California first in February, 1914, in connection with some business, and at that time those who subsequently became the officers and directors and stockholders of the Pacific Crude Oil Company were about organizing the company, but the organization had not been completed before I left. However, they retained me as attorney to take up the matter particularly of the purchase of this Big Sespe property, as it was commonly called, and they gave me general instructions as to what they wanted to accomplish,

and that was to buy the property and take care of it; and I came out here on other matters, as I say, and then immediately took up that matter, and on March 30, with the money they furnished me, I acquired the title represented by the two deeds which went into evidence this morning." (96.)

It is true that the grantee named in the two deeds from this appellant (557-562) transferring the title to the property is "William H. Cochran, Trustee for Pacific Crude Oil Company." These are the only instruments in writing shown, by the record, to have ever existed relating to any trust in the property.

These instruments are insufficient to create or declare any trust.

Wittfield v. Foster, 124 Cal. 418;

Carpenter v. Cook, 132 Cal. 621.

These two cases, especially the former, are directly in point and conclusive of the question we are now discussing.

This recital of the circumstances under which said property was purchased by William H. Cochran in his name brings the relationship between him and the Pacific Crude Oil Company squarely within the definition of a resulting trust contained in section 853 of the Civil Code of the State of California. It provides:

"When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by and for whom such payment is made."

The above quoted statutory provision embodies the generally established principle that when the purchase money of land is paid by one party and the legal title is taken in the name of another, a resulting trust arises in favor of the party from whom the consideration proceeds and which will be enforced in a court of equity. Perry on Trusts, 6th Edition, page 18, says in regard thereto:

“Resulting trusts are trusts that the courts presume to arise out of the transactions of parties, as if one man pays the purchase money for an estate, and the deed is taken in the name of another. Courts presume that a trust is intended for the person who pays the money.”

And the same author says on page 190:

“If a person having a fiduciary character purchase property with the fiduciary fund in his hands, and take the title in his own name, a trust in the property will result to the *cestui que* trust, or other person entitled to the beneficial interest in the fund with which the property was paid for.”

In the foot-note to this text it is said:

“A resulting trust is based upon the intention of the party who directs the transaction; a constructive trust is imposed upon him by equity, usually directly contrary to his intention, * * *”

As no instrument in writing declaring the trust and defining and limiting the uses and purposes of the trust property and the duties of the trustee as to its control, management and disposition, was executed by

the Pacific Crude Oil Company and William H. Cochran, the mere fact that the parties had understood or orally agreed that the latter should hold the property in trust does not in any way militate against the nature of the trust as one which came into being under section 853 of said Civil Code. In *Gerety v. O'Sheehan*, 9 Cal. App. 447, 449, 450, it is said in reference thereto:

"Any agreement found to exist between the parties was oral; hence, such agreement could not constitute an express trust (Code Civ. Proc., Sec. 1971), and being oral, plaintiff could not base any right to recover thereon. Therefore, any allegation in the complaint, or findings of fact, in respect to this oral agreement may be disregarded as immaterial. The fact that the parties agreed verbally to do that which the law implies from their acts did not in any wise affect the character of the transaction as a trust created by operation of law. (*Bayles v. Baxter*, 22 Cal. 575.) Nor is there any uncertainty as to the portion of the property to which the trust extended, as it results, not from any agreement, oral or otherwise, with reference to the proportion of interest which each shall hold, but from the facts shown as to the amount of purchase money advanced by each. (*Faylor v. Faylor*, 136 Cal. 92 (68 Pac. 482).)"

The same principle is expressed by the Supreme Court of the United States in *Smithsonian Institution v. Meech*, 169 U. S. 398, 42 L. Ed. 793, 798, wherein the Court also defines the essential distinction between express and resulting trusts. The Court says there:

“The general proposition is unquestioned that, where upon a purchase of property the conveyance of the legal title is to one person while the consideration is paid by another, an implied or resulting trust immediately arises, and the grantee in the conveyance will be held as trustee for the party from whom the consideration proceeds.

“This rule has its foundation in the natural presumption, in the absence of all rebutting circumstances, that he who supplies the purchase money intends the purchase to be for his own benefit, and not for another, and that the conveyance in the name of another is a matter of convenience and arrangement between the parties for collateral purposes, and this rule is vindicated by the experience of mankind. 1 Perry, Tr., 4th ed., §126. * * *

“The existence of an express agreement does not destroy the resulting trust. It was not an agreement made by one owning and having the legal title to real estate by which an express trust was attempted to be created, but it was an agreement prior to the vesting of title—an agreement which became a part of and controlled the conveyance.”

The purchase of the land was made by William H. Cochran at the instance of the Pacific Crude Oil Company, with its money and for its benefit, and said William H. Cochran by taking the title in his name became a trustee for said corporation, holding only the naked legal title and being charged with the obligation to convey the land to the Pacific Crude Oil

Company at the latter's demand. This obligation was enforceable in equity by the Pacific Crude Oil Company against said Cochran or anyone succeeding to the title of trustee. In *South San Bernardino Land and Improvement Company v. San Bernardino National Bank*, 127 Cal. 245, the legal title of the trustee was sold under execution and the purchaser took the same with notice of the equity of the *cestui que* trust. The Court held there that the *cestui que* trust could compel such purchaser to convey the legal title to himself. The Court said, on page 247:

“It is settled law that where one pays the purchase price of land and the land is thereupon conveyed to another, the title to the land is held, under such conveyance, in trust for the person who has paid the purchase price. (Civ. Code, Sec. 853.) * * * and the *cestui que* trust may, in a court of equity, compel a conveyance to himself of the legal title as well from anyone succeeding to the title of the trustee, with notice, as from the trustee himself. (2 Pomeroy's Equity Jurisprudence, Sec. 1038.)”

In other words, the trustee under a resulting trust has no interest in the property to which a judgment lien can properly attach or which could be sold to the exclusion of the rights of the *cestui que* trust. In *Atkinson v. Hancock*, 67 Iowa 452, 25 N. W. 701, one Cummins, against whom a judgment lien subsisted, purchased certain lots for one Slead and took the deed in his name, although said Slead paid the purchase price therefor. It was claimed that the

judgment lien against Cummins attached to said lots, but the Supreme Court of Iowa, holding that such contention could not be maintained, said:

“But, if it be conceded that Cummins paid the purchase price to Harrison, and the deed was delivered to him, the fact remains that the money so paid belonged to Slead, and that the payment was made for the purpose of vesting the title to the lots in the latter. Cummins was, it is true, vested with the naked legal title. The conveyance was made to him as a matter of convenience. He was a mere conduit and held the legal title in trust for Slead. Under the circumstances Cummins had no interest on which the judgment became a lien. His creditors can only get what he had, and what he had was of no pecuniary value.”
(Citing cases.)

A judgment affects the actual interest which the judgment debtor has in the property upon which the judgment is sought to be enforced. In *Riley v. Martinelli*, 97 Cal. 575, the Supreme Court of California uses the following language in regard thereto on page 580:

“The doctrine is well established, also, that the lien of a judgment and execution attaches to the real, instead of the apparent, interest of the judgment debtor in and to his property, * * *”

The Pacific Crude Oil Company at the time of the execution sale in question having paid the purchase price for the property owned all the equitable title and interest in said property, and the defendant herein

by purchasing the same at the sheriff's sale acquired the whole thereof. William H. Cochran as the holder of the legal title under a resulting trust had no interest in the property and was charged with the duty to convey the legal title on demand of the *cestui que* trust or the defendant, its successor in interest.

POINT 2.

Upon Purchase of the Property at the Sheriff's Sale the Appellant Became Entitled to the Rents and Profits Therefrom and in No Event Can He Be Deemed a Trespasser.

Based upon same portions of the record referred to in connection with Point 1, *supra*.

The interlocutory decree (375) in paragraph "Eighth" thereof declares: "* * *, the said purchaser, Big Sespe Oil Company, was not entitled to such possession or occupation of the said real property;" From this holding of the District Court the Special Master concluded, "* * *, that the defendant's possession, occupation and operation of the property was illegal, and that the defendant was a trespasser thereon" (408).

We have already shown (*supra* pp. 43 to 52) that the judgment debtor, Pacific Crude Oil Company, was at the date of the levy and the execution sale the owner of the complete equitable title to the property; that this equitable estate amounted to and was the entire beneficial estate, and was equivalent in equity to the corresponding legal estate.

See also in this same connection:

Pom. Eq. Jur., 4th Ed., Vol. 3, Sec. 1043, p. 2367.

Cochran as trustee was merely a holder of the naked legal title. Prior to the execution sale the judgment debtor, Pacific Crude Oil Company, and not Cochran, was entitled to the rents and profits and likewise the possession of this property. Upon the sale, this appellant, as purchaser, acquired all the rights of said judgment debtor in the land and, therefore, became the owner of the complete title, with all the rights springing from the beneficial ownership thereof, subject only to have its estate defeated by a proper redemption and the right of the judgment debtor to the possession of the property during the period allowed for redemption.

Code of Civil Procedure, Sec. 700;

Pollard v. Harlow, 138 Cal. 390, at 392;

Robinson v. Thornton, 102 Cal. 675, at 680;

Leet v. Armbruster, 143 Cal. 663, at 666.

In *Pollard v. Harlow*, *supra*, the Court at page 392, in discussing the rights acquired by the purchaser at an execution sale, quoting from a previous decision by the same court, used the following language:

“Upon the sale, he acquired all the right, title, interest, and claim of the judgment debtors there-to (*Code Civ. Proc.*, Sec. 700), subject to be defeated by a redemption within six months, and to the right of the judgment debtors to remain in the possession of the land until the execution of

the sheriff's deed; and all that remained in the (judgment debtors) was this right of redemption and to retain possession of the land until the expiration of the time therefor.'"

The Code of Civil Procedure is specific in providing not only that the purchaser at such sale acquires all the right, title and interest of the judgment debtor, subject only to the right of redemption, but in addition thereto acquires another very substantial right, viz., such purchaser upon said sale immediately becomes the *absolute owner of and entitled to all the rents and profits of said property during the period allowed for redemption.*

Code of Civ. Proc., Sec. 707.

This appellant, therefore, upon said execution sale, immediately became and, therefore, continued to be entitled to receive the entire rents and profits of the property involved in the redemption, and this right existed no matter who was in possession.

Walker v. McCusker, 71 Cal. 594.

See, also:

Duff v. Randall, 116 Cal. 226, at 230,

wherein the Court, in discussing the right of the purchaser to all the rents and profits of the property sold or the value of its use and occupation from the time of the sale until the redemption, says:

" * * * the purchaser has the entire beneficial interest in the property, subject to be defeated by a redemption from the sale: * * *

‘It is not a mere right to have a certain sum charged upon the property satisfied out of it. The sum before charged upon the land has already been satisfied by the sale to the extent of the amount bid and paid by the purchaser. *The purchaser has already bought the land and paid for it.*’ ” (Italics ours.)

If this appellant was the owner in equity of the land (Page v. Rogers, 31 Cal. 293), or possessed of the complete beneficial ownership (Pollard v. Harlow, *supra*), and was entitled to the rents and profits no matter who was in possession, how can it be said that complainant or the judgment debtor was in any wise injured by the possession of appellant, and where is there any justification for enforcing against this appellant, as was done by the master (412 *et seq.*) and confirmed by the Court (360), the harsh rule of willful trespasser, as announced in Mahony v. Bostwick, 96 Cal. 59, a case wherein defendant, who held only a mortgage without the right of possession and was not entitled to the rents or profits or the value of the use and occupation of the property, forcibly ousted the owner from his property? As heretofore stated, the evidence fails entirely to show that any force, threats or intimidation whatever was used by appellant in taking possession of said property or in operating the same, and that no objection or interference with said possession or occupation was made by said judgment debtor or complainant or said trustee at any time until the commencement of this action.

Indeed, this question of possession or right to possession during the period of redemption over which so much was made in the lower court is immaterial in this case. Such possession was taken solely for the purpose of operating and caring for said property. *Its only value was as an instrumentality to produce "profits" from said land*, and, as heretofore stated, these profits belonged to and were the property of appellant, even if the judgment debtor itself was in possession and producing them. This possession of appellant and its operation of the property was a benefit and not a detriment to the judgment debtor. All the expense of care, maintenance and production were borne by appellant and thus saved to the judgment debtor.

This error is vital. Based upon it the Court, in confirming the master's report (see oral opinion of Dist. Judge, Tr. 360 *et seq.*), denied appellant credits as follows (see Special Master's Report, Record page 419, and section VI, Record page 429):

Hornada's salary (Record page 430).....	\$ 3,700.00
" provisions (Record page 432) ..	931.64
" transportation (Record page 433)	138.31
Repairs (Record pages 434-435).....	380.24
Miscellaneous expenses (436)	242.25

Total disallowed (Record pages 436-7) \$5,392.44

The foregoing were expressly denied on the one ground that appellant was a trespasser.

In addition thereto disbursements by supplementary statement should be added
 (Record page 471)..... 1,365.78

Total\$ 6,758.22

Other credits, denied on other grounds, and herein claimed to be proper, were likewise denied on this ground as follows:

“Improvements”	Restoring wells Nos. 3 and 4 (Tr. 439-440)	1,278.39
“	Wells 1 and 5 (Tr. 440-441)	1,192.34
“	New water system (Tr. 442)	94.15
“	New road (Tr. 443-444)	814.20
“	Additional gauging tank (Tr. 445)	75.00
		<hr/>
		\$ 3,454.08

Grand total\$10,212.30

The foregoing does not include any part of the 5/6 of the gross production of the output (or selling price) customarily allowed to an operator for managing the real property for the appellee, after deducting all expenses of operation. This sum was claimed to be \$773.01 (Tr. 383-384).

Upon the execution sale on March 3, 1917, appellant, as the purchaser of all the right, title and interest of the judgment debtor, entered into the possession of the property and thereafter operated the property, at

great expense to it, and realized from such operations the sum of \$24,054.11 as gross receipts. In and by the final decree (499) it was compelled to account for every cent of these gross receipts, except the sum of \$746.31 (Mas. Rep. 425) paid for state and county taxes. In addition thereto (Mas. Rep. 453-454) appellant was charged with each amount of money received by it from the sale of the oil as of the date when each such amount was received, and this amount was then deducted from the amount then owing on the judgment, and in addition thereto appellant was charged with interest at 7% per annum on each of these amounts from the date of its receipt until the entry of the final decree. In addition, monthly rests were ordered and each amount of proceeds received by appellant was ordered (Mas. Rep. 454) "to be deemed money of the judgment debtor paid into the hands of the purchaser, and should be immediately applied as in payment on the principal amount of \$17,340.50 paid by the defendant as purchaser at the execution sale, after adding interest at the rate of 1% per month." In other words, the interest at 1% per month was ordered computed only upon the balance remaining after deduction therefrom of the moneys received by appellant from month to month out of the profits of the property. Appellant, as heretofore stated, was allowed nothing for expenses, labor, repairs or improvements placed upon the property.

All this was on the theory, appearing for the first time in the case in the special master's report (408),

that appellant in entering into the possession of and operating said property was a *willful trespasser*.

In approving the master's report, the Court confirmed the master's recommendation and finding (453-454) in which it was held that appellant should be charged for each amount of money received by it from the sale of the oil extracted as and of the date when each such amount was received; that appellant should also be charged with interest at 7% per annum upon each amount as received from the time of the receipt of each of said amounts; and that from March 3, 1917, and monthly thereafter, up to April 1, 1918, appellant was not entitled to and should not be credited for interest at 1% on the entire amount of the purchase money paid at the execution sale, but that monthly rests should be made and the amounts received by appellant during the preceding month should "be deemed money of the judgment debtor paid into the hands of the purchaser" and immediately applied as payment on the principal amount and interest thereafter charged by appellant only on the balance.

This was manifestly error, because, as heretofore shown, appellant was entitled to the amounts received. They were the "profits," the value of the use and occupation, *they belonged to the appellant, not to the judgment debtor*. It is absurd to say that, upon the receipt of money by a person to whom it belongs and who is entitled in his own right to receive it, an obligation at once arises whereby he becomes obligated to pay interest thereon to some other person. It is true

that, in the event of redemption, the judgment debtor is entitled to credit for the amount of the profits received.

Code of Civ. Proc., Sec. 707.

But neither this section of the code last cited nor any other law of California provides that the judgment debtor or redemptioner is entitled to credit not only for the rents and profits received, but for interest thereon.

Again, this question of possession is immaterial in this case, because and for the reason that the only person who is shown by the record to have had any right to the possession of the property was the judgment debtor, the Pacific Crude Oil Company. It is not a party to this litigation. Complainant cannot question appellant's possession. His rights are based solely upon an alleged assignment (Compl. Ex. 8, 569) from the judgment debtor, and this instrument does not transfer or assign nor purport to transfer or assign any right to the possession of the property, nor any right to damages growing out of any past trespass, assuming (which we do not admit) that any such right is assignable.

Nor was there before the court a party entitled to the balance of the profits calculated by the special master to amount to \$3,843.84, which, together with the interest thereof, the court directed appellant to deposit in court for the final disposition thereof. In no event can the complainant claim any interest in the

rents and profits from the property in question. His alleged assignment (Compl. Ex. 8, Tr. p. 569) does not give nor does it purport to give him any such right. The Pacific Crude Oil Company was not made a party to this action. Much less has the intervenor William H. Cochran as trustee any right thereto, for the reason that as such trustee William H. Cochran was the holder of the naked legal title and had no beneficial interest whatever in the property.

It must be manifest from this state of facts that the accounting before the special master, proceeding, as it did, upon the theory that appellant was a mere trespasser, was based upon an erroneous premise, and that the decree of the court affirming said account and report should be reversed.

POINT 3.

The Attempted Demand for a Statement of Rents and Profits Made on March First, 1918, Was Invalid and Ineffectual for Any Purpose.

Based upon answer, paragraphs X, XI and XII (57-59 inc.), XXIII (73); Assignment of Error, 9 and 10 (517), 13 (517), 14 (518), 15 and 16 (518).

On the 1st day of March, 1918, to-wit, two days before the expiration of the statutory time for redemption, a demand (27) was presented purporting to come from William H. Cochran, attorney for the Pacific Crude Oil Company, from William H. Cochran as trustee and from William H. Cochran individually.

The latter obviously had no right in the premises in view of the fact that even the alleged assignment to him of the right of redemption was made long after March, 1918, namely, in the following year. William H. Cochran as trustee likewise had no right to make such demand, as he was neither the judgment debtor nor its successor in interest, in the whole or any part of the property. The Pacific Crude Oil Company as the judgment debtor had an undisputed right to make such demand, but said demand purported to emanate from William H. Cochran as attorney for said Pacific Crude Oil Company and William H. Cochran was not the attorney of record for the same. Section 707 of the Code of Civil Procedure of the state of California providing the procedure for a demand and accounting expressly requires that the demand for a statement of rents and profits should be made in writing, and such demand operates to extend the statutory period of time for redemption. Such demand necessarily is predicated upon the right to redeem and to call for an accounting in behalf of the judgment debtor. The very multifariousness of the signature of said William H. Cochran affixed to said demand suggested the probability that he was not authorized at all to act in the premises for the judgment debtor and to make the demand in writing referred to in said section 707, C. C. P.. Upon demand (Compl. Ex. 7, Tr. p. 27) on the part of appellant to exhibit his authority to demand an accounting for the judgment debtor, it was incumbent upon said William H. Cochran to

comply with said demand. He refused to do so and nothing more was done in the matter until the expiration of one year and four months, when this action was commenced.

Furthermore, it appears, from the evidence, that appellant's demand for proof of said William H. Cochran's authority to demand a verified statement of account was fully warranted and that said William H. Cochran, in point of fact, had no legal authority to act for the judgment debtor in the premises.

William H. Cochran, the complainant herein, testified in reference to his employment by the Pacific Crude Oil Company as follows (90):

"I was retained generally to come to California and take charge of any interests which the Pacific Crude Oil Company might determine to look into or go into in this state, and particularly to acquire the title to this property, which was commonly known as the Clampitt property, and I did that, and represented them, as I say, in various matters, and tried to work out their affairs here for five years."

This employment was in 1914 (96).

So, too, in response to Interrogatory No. 13 (46), it is stated:

"I never was the agent of the company. I was the attorney at law in California, for the company; but there was no particular written document of such retainer. There was no particular document authorizing me to represent the company as its Trustee. But in my capacity of attor-

ney for the Company I received several written communications directing and authorizing me to act as trustee for the Company in acquiring the title to the real property involved in this suit, and to take such title in my own name as Trustee for the Company." (*Italics ours.*)

William H. Cochran thus confessedly was employed by the Pacific Crude Oil Company for the period of five years without having any written power to act for the same. Such agreement of employment under the statute of frauds is invalid. Section 1624 of the Civil Code of the state of California reads in part as follows:

"The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing, and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof; * * *

This fundamental principle embodied in the aforesaid section of the Civil Code of the state of California applies to all cases wherein the period of employment is fixed for a period of time in excess of one year although the agreement might be performed within a year, as well as to cases wherein no specific period for the duration of the contract is fixed but which within the contemplation of the parties is not to be performed within one year. This rule is stated in 1 Chitty on Contr. (11th Ed.) page 99 in the following language:

“This enactment applies to all contracts, the complete performance whereof is of necessity to extend beyond the space of a year; the rule being, that where the agreement distinctly shows, upon the face of it, that the parties contemplated its performance to extend over a longer period than one year, the case is within the statute. Accordingly, the provisions of the statute render a verbal contract void, if it appear to have been the understanding of the parties at the time, that it was not to be completed within a year, although it might be, and was, in fact, in part performed within that period.”

And in *Seymour v. Oelrichs*, 156 Cal. 782, the Supreme Court of the state of California applied this principle to a contract of employment which did not specifically fix the time of duration of the employment but which was to continue for a number of years.

In this case, the agreement of employment of William H. Cochran by the Pacific Crude Oil Company covered the period of five years, and not being evidenced in writing as required by section 1624, C. C., was utterly void. William H. Cochran therefore had no right to make the demand in writing as attorney of the judgment debtor, and the attempted demand being unauthorized did not extend the period for redemption. The time therefor expired on the 3d day of March, 1918, and the title of appellant having become absolute on that day, a writ of mandate subsequently was issued by the Superior Court of Ventura county directing the sheriff to execute a deed conveying to appellant the property in question. This he did on August 29, 1918 (598).

POINT 4.

An Assignment by the Judgment Debtor of the Mere Right to Redeem Does Not Under the California Statute Entitle the Assignee to Redeem Unless He Has an Interest in the Whole of the Property or Some Part Thereof.

Based upon Answer, paragraphs XVII (65), and XXII (72); Inter. Dec., paragraph Twelfth (377), and Final Decree, (498, 500); Assignment of Error, 9 and 10 (517), 17 to 20 inc. (518 and 519).

The right to redeem from an execution sale does not exist independently of statute. It can be exercised only by those persons who are specifically designated and enumerated in the statute.

In *Lynch v. Burt*, 132 Fed. 417, 429, it is said in regard thereto:

“In the absence of statutory provision therefor there is no right of redemption from execution sales, and it logically follows that the extent or measure of the right is found in the statutory terms prescribing the time and method of its exercise and designating the persons who may exercise it. *Keely v. Sanders*, 99 U. S. 441, 446, 25 L. Ed. 327.”

The statute of California, section 701 of the Code of Civil Procedure, confers the right of redemption only upon two classes of persons: first, “the judgment debtor or his successor in interest *in the whole or any part of the property*”; and, second, creditors who are

termed redemptioners. The statute does not mention any other person who may avail himself of the right of redemption. While it may be true that the judgment debtor may redeem although he has parted with his interest in the property or any part thereof, as the right of redemption is specifically granted to him, he cannot, independently of a transfer of some interest in the property, clothe a stranger as assignee with the right of redemption which is given only to him personally or to his successor in interest in the whole or part of the property. The statute does not extend the right of redemption to assignees of the judgment debtor but expressly names only his successors in interest in the property. Moreover, under the California statute the effect of redemption is to revest the person redeeming the property with such right and interest in the property as he had prior to the execution sale. It cannot be perceived that the statute intended to revest an assignee of the judgment debtor with an interest which he never had. The whole purpose of redemption is the restoration of the judgment debtor or his successor in interest in the property to the original estate. An assignee of the mere right of redemption has no interest in the property to which he could be restored. In order, therefore, to hold that the complainant here, as assignee of the mere right of redemption, has the right to redeem pursuant to the statute, it would be necessary to judicially insert into the statute the additional provision that the judgment debtor as well as his assignee may redeem. Such

interpretation or extension of the statute would be in conflict with the fundamental rule of construction of statutes enacted in derogation of the common law and cannot be adopted. It seems evident that under the statutes of California the complainant has no right to maintain this action.

In *Emerson v. Yosemite Gold Min. etc. Co.*, 149 Cal. 50, at 58, the Supreme Court of California, in discussing the essentials that must be possessed by a successor in interest of the judgment debtor in order to entitle such successor to redeem, used the following language:

“The thing adjudged in the redemption action was simply that the plaintiffs, as successors in interest, had the right to redeem the whole of this property from the foreclosure sale. That they should have this right, it was essential that they should be successors in interest of one or more of the judgment debtors *in some portion of the property*, but it was not essential to this right, and therefore not essential to the judgment, that they should be the successors in interest of all the judgment debtors. (Code Civ. Proc., Sec. 701, Subd. 1.) Their allegation that they were the successors of all the judgment debtors was material in the sense that it was necessary for them to prove that they had succeeded to the interest of some judgment debtor *in some part of the property*, and the judgment is necessarily conclusive upon that point.” (Italics ours.)

In every decision which we have been able to find, in the California Reports in which it has been held that the successor in interest of the judgment debtor had the right to redeem, it appeared that such successor in interest was a successor in interest "in the whole or any (some) part of the property" and possessed, prior to attempting to redeem, a deed or other conveyance from the judgment debtor to him of the whole or some part or portion of the property.

The assignment (569) to Cochran does not transfer or convey or purport to transfer or convey any part or portion of the property or any of the right, title or interest of the judgment debtor therein.

POINT 5.

The Purported Assignment of the Right of Redemption Is Invalid by Reason of the Fiduciary Relationship Existing Between the Complainant and His Assignor at the Time of the Alleged Assignment.

Based upon same portions of the record hereinbefore referred to in connection with Point 4.

The assignment to complainant of the right to redeem the property involved herein, as testified to by the complainant himself (page 90), was made in consideration of services rendered by complainant in and about the same real property. In other words, the Pacific Crude Oil Company after having paid for the

property agreed by this assignment to part with its rights thereto for no consideration other than the services performed by the complainant in purchasing the property and taking care of the same. The complainant held the property for the Pacific Crude Oil Company as trustee. An assignment of any right thereto to the complainant, being a transaction upon which the law looks with scrutiny, cannot be upheld in a court of equity unless it is clearly established that all the stockholders of the Pacific Crude Oil Company had full knowledge of the facts concerning this transaction and also that the consideration paid for the same was fully adequate. Independent of the fact that said assignment does not disclose that the officers of the corporation who executed the same were duly authorized to make such assignment, which point is more particularly discussed *infra*, the evidence does not show that the stockholders of the Pacific Crude Oil Company had any knowledge of said assignment or agreed to the same.

The principle of law that in case of transfers of property between a *cestui que* trust and his trustee courts must inquire into the fairness of the transaction, is too well established to require extensive citation of authorities. This principle is expressed in sections 2230 and 2235 of the Civil Code of the state of California. Section 2230 provides in part:

“Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts, as agent,

has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

“1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;”

Section 2235 C. C. reads as follows:

“All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.”

In *Broder v. Conklin*, 121 Cal. 282, 286, the Supreme Court of the state of California construing the above quoted section 2230 of the Civil Code says:

“This principle declared by the code is but a perfect echo of the common law. It is said in *Sugden on Vendors*, *895, that to support such a sale ‘it must clearly appear that the purchaser at the time of the purchase had shaken off his confidential character by the consent of the *cestui que* trust, freely given, after full information and bargaining for the right to purchase.’ Tested by the principle of law, was Conklin, under the facts disclosed by the record, authorized to buy this property at the sale? And, in considering this question, it must be borne in mind that there are no presumptions in favor of the action of a trus-

tee where he deals with the property of his beneficiary. The presumptions are against him, and the burden of proof is upon him."

And in *Golson v. Dunlap*, 73 Cal. 157, 161, 162, the same court interpreting the meaning of the term "sufficient consideration," mentioned in section 2235 C. C., uses the following language:

"The argument is, that the words 'sufficient consideration' in this section do not mean an adequate consideration, but a consideration which is sufficient to support a contract between ordinary parties; and that if any valuable consideration be shown, the presumptions established by the section is rebutted, and the transaction must be held valid. It is to be observed of this proposed construction that it would place all trustees upon a level, and measure their obligations by the same standard, and that this standard is not a high one. But the analogies of the law of trusts have been extended to so many classes of cases, and the term 'trustee' is applied to so many persons whose obligations certainly vary in considerable degree, that we think it could hardly have been intended to apply any such Procrustes rule to them all. A fixed standard might gratify a love of symmetry and be easy of application, but would not further the ends of justice. In our view, the words 'sufficient consideration' mean not sufficient to support a contract between ordinary parties, but sufficient to support the particular transaction; and the presumption raised by the section can be rebutted only by proof of such a consideration. With reference to what consideration is sufficient to support the particular transaction, resort must be had to the rules of courts of equity."

In the case at bar the undisputed evidence discloses that the consideration for the assignment was not only inadequate but tended to operate as fraud upon the stockholders of the Pacific Crude Oil Company who had paid the money for the property. In addition thereto the evidence fails to show that the stockholders of said Pacific Crude Oil Company had any knowledge concerning the transaction or participated therein in any manner.

This action is brought in equity. The complainant, whose right to action is based upon said alleged assignment from his *cestui que* trust, should not be heard in a court of equity unless he establish to the satisfaction of the chancellor that said assignment was fairly obtained and that complainant did not take any advantage over the stockholders of the Pacific Crude Oil Company by reason of his position as holder of the legal title to the said property.

POINT 6.

Said Purported Assignment From Pacific Crude Oil Company, a Corporation, to William H. Cochran, Complainant, Was Not Legally Executed and the Pacific Crude Oil Company Was Not Bound Thereby.

Based upon answer, paragraphs XVII (65) and XXII (72); Assignments of Error 18-19-20 (519).

The right to the action brought by complainant herein is founded upon a certain instrument in writing

purporting to be executed by the president of the Pacific Crude Oil Company and attested by the secretary thereof. This document, to which the seal of the corporation is affixed, is the only evidence introduced by complainant or found in the record to support his right to maintain this action. At the time of the introduction of said document in evidence the defendant objected to the introduction of the same upon the ground that no authority of the president or secretary of the corporation to execute the alleged assignment had been established (85), (98), (99). Appellant has an exception to the receipt in evidence of said Exhibit 8 (Exception 79, Tr. p. 99). Said objection was overruled by the court, and the complainant introduced no further evidence to prove the authority of said officers of the Pacific Crude Oil Company to assign to complainant the right to redeem the property sold at the execution sale.

It is a firmly established principle of law in reference to the powers of officers of a corporation that they are not general but special agents thereof, and have only such powers as expressly conferred upon them by the general laws and the by-laws of the corporation. In dealing with the assets of the corporation it acts through its board of directors as a whole, and no individual director or directors may convey or transfer any property of the corporation unless the board, by a resolution properly attested and authenticated, empowers the respective officers to perform the act in question. An oral authorization or approval of

such an act is wholly insufficient to legalize any act of individual officers of a corporation which, under the general laws and by-laws, can only be done through the board of directors.

In *Kansas City Hay-Press Co. v. Devol*, 72 Fed. 717, it is said, on page 721, in reference to an oral authorization by the board of directors:

“This statute does not say that an act shall be deemed to be that of the governing board whenever it shall be shown to have received the sanction of members of the board, but its express language is that this voice of the majority shall control in the corporate transactions, when ‘duly assembled as a board.’ How is this corporate action—the voice of the body politic—to be evidenced? Clearly, by assembling together as a board, either at regular, stated meeting, or at a called convention after due notice to each member of the board, as prescribed by the by-laws herein quoted.

“The state of California has a similar statute. In *Gashwiler v. Willis*, 33 Cal. 12, the court held that not all the stockholders, concurring by separate acts or joint act, could transfer the corporate property, because—

“‘The property in question was the property of the artificial being created by the statute. The whole title was in the corporation. The stockholders were not, in their individual capacities, owners of the property, as tenants in common, joint tenants, copartners, or otherwise.’

“And although the governing board of trustees were present, and participated in the act of the

stockholders, it was held to be ineffectual to pass the title. The court said:

“‘Such is not the mode in which the corporation is authorized by the law of its creation to manifest its will and exercise its corporate powers. The power to sell and convey could only be conferred by the trustees when assembled and acting as a board. This is the mode prescribed.’

“In *McCullough v. Moss*, 5 Denio, 567, the court says:

“‘The affairs of the corporation were to be conducted by five directors, a majority of whom formed a board for the transaction of business, and a decision of a majority of those duly assembled as a board was requisite to make a valid corporate act. * * * The stockholders, as such, in their collective capacity could do no corporate act. The directors were their representatives, and alone authorized to act.’

“In *Cammeyer v. Lutheran Churches*, 2 Sandf. Ch. 208-229, the vice chancellor said:

“‘The directors in the bank, and the trustees, in this case, are, by the charter, the select class or body which is to exercise the corporate functions. In order to exercise them, they must meet as a board, so that they may hear each other’s views, deliberate, and then decide. Their separate action, individually, without consultation, although a majority in number should agree upon a certain act, would not be the act of the constituted body of men clothed with the corporate powers. Nor would their action in a meeting of the whole body of corporators, or of another and larger class, in which they are but a component part, be a valid

corporate act. In thus acting they would not be distinguishable from their associates, and their action is united with that of others who have no proper or legal right to join with them in its exercise. All proper responsibility is lost. The result may be the same that it would have been if they had met separately, and it may be different. In the general assemblage, influences may be brought to bear upon the trustees, which, in their proper board, would be unheeded, and no one can say with certainty that their vote in the latter event would have been the same.'

"In *State v. Ancker*, 2 Rich. Law, 245, the court, speaking of the action of a board illegally assembled, says:

"'Without being summoned together, the board, as individuals, have no official authority, nor have they any original authority at all, either under the charter or the by-laws.'

"So it is said in *Titus v. Railroad Co.*, 37 N. J. Law, 102:

"'The affairs of corporate bodies are within the exclusive control of their board of directors, from whom authority to dispose of assets must be derived.'

"See, also, *Bank v. Dunn*, 6 Pet. 51; *U. S. v. City Bank of Columbus*, 21 How, 356; *Railway Co. v. Allerton*, 18 Wall. 233; *Walworth County Bank v. Farmers' Loan & Trust Co.*, 14 Wis. 357; *Hyde v. Larkin*, 35 Mo. App. 365."

The same principle is enunciated in *Black v. Harrison Home Co.*, 155 Cal. 121, on pages 126 and 127, from which we quote as follows:

“It is an elementary principle of corporation law that the president of a corporation has no power merely because he is president to bind the corporation by contract. The management of the affairs of a corporation is ordinarily in the hands of its board of directors, and the president has only such power as has been given him by the by-laws and by the board of directors, and such other power as may arise from his having assumed and exercised the power in the past with the apparent consent and acquiescence of the corporation. The general rule in this regard is stated in 2 Cook on Corporations, section 716, as follows: ‘The president of a corporation has no power to buy, sell, or contract for the corporation, nor to control its property, funds or management. This is a rule which prevails everywhere, excepting possibly in the state of Illinois. * * *

It is true that the board of directors may expressly authorize the president to contract; or his authority to contract may arise from his having assumed and exercised that power in the past; or the corporation may ratify his contract or accept the benefits of it, and thereby be bound. But the general rule is that the president cannot act or contract for the corporation any more than any other one director.’ (See *Alta Silver Min. Co. v. Alta Placer Min. Co.*, 78 Cal. 629, 632 (21 Pac. 373); *Bliss v. Kaweah etc. Co.*, 65 Cal. 502 (4 Pac. 507); *Salfield v. Sutter etc. Co.*, 94 Cal. 546 (29 Pac. 1105); *Blood v. La Serena etc. Co.*, 113 Cal. 221 (41 Pac. 1017, 45 Pac. 252); *Barney v. Pfoor*, 117 Cal. 56, 58 (48 Pac. 987); *Northwestern etc. Co. v. Whitney*, 5 Cal. App. 105, 108 (89 Pac. 981).)”

In *Mattoax Leather Co. v. Patzowsky*, 2 Boyce Del. Rep. 327, 80 Atl. 241, the syllabus reads as follows:

“That, without official action, a majority of the directors of a corporation orally authorized plaintiff’s officer to sell a machine owned by the corporation, and to sue for the price, is insufficient to show plaintiff’s right to recover the price.”

In this case it was sought by oral evidence to prove the authority of the secretary and treasurer of the corporation to sell a certain machine belonging to the corporation, and also to prove the authority of said secretary and treasurer to enter suit for the purchase price. The said secretary and treasurer testified that he had no written authority to make said sale or to bring said suit, but that the majority of the directors orally authorized him to sell it and to bring suit for the purchase price. The court, in discussing this testimony, held it was inadmissible, using the following language:

“We now have no doubt that the plaintiff has not shown sufficient authority, and we order that the testimony of this witness as to his authority to sell and sue be stricken out.”

This is an authority from the state of Delaware, under the laws of which the alleged assignor in said assignment was incorporated.

Paragraph fourteenth of the interlocutory decree (379), after finding that the judgment debtor, Pacific Crude Oil Company, was a corporation existing under the laws of the state of Delaware, finds as follows:

“That, on January 28, 1918, said Pacific Crude Oil Company forfeited its charter to the said state of Delaware for and because of non-payment of certain taxes then due to that said state.”

The said decree then proceeds to the effect that, notwithstanding said forfeiture, the said judgment debtor did not cease to exist as a corporation, but, under the laws of Delaware, was continued as a body corporate for three years, for the purposes, and with the powers, in said statutes described, including the redemption of the property in this case, and the bringing and maintaining of all necessary actions in connection therewith; also that said corporation continued a body corporate, and retained its officers and directors, with the authority theretofore possessed by them and each of them, and that the said assignment (Complainant's Exhibit 8) was made and executed by the legally constituted and authorized attorneys and officers of said company.

Section 74 of the Delaware Franchise Tax Law, quoted in full in the transcript (643), provides that when any corporation shall for two consecutive years fail to pay the state any taxes, “the charter of such corporation shall be void, and all powers conferred by law upon such corporation are declared inoperative and void. * * *

It was contended by appellee in the court below—and this contention was sustained by the interlocutory decree—that, notwithstanding the provisions of said section 74 of the Franchise Tax Law, the said cor-

poration continued to exist as a corporation and to have all the rights theretofore possessed by it so far as its actions in connection with this case are concerned. This contention was based upon the provisions of sections 40, 41 and 42 of the general corporation laws of the state of Delaware, which are quoted in full in the transcript (639-640), and which read as follows:

“Sec. 40. CONTINUATION OF CORPORATION AFTER DISSOLUTION; FOR PURPOSES OF SUIT, &c.:—All corporations, whether they expire by their own limitation, or are otherwise dissolved, shall nevertheless be continued for the term of three years from such expiration or dissolution bodies corporate for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, and to divide their capital stock, but not for the purpose of continuing the business for which said corporation shall have been established.

Sec. 41. TRUSTEES UNDER DISSOLUTION:—Upon the dissolution of any corporation under the provisions of section 39 of this Chapter, the directors, or the governing body, by whatever name it may be known, shall be trustees thereof, with full power to settle the affairs, collect the outstanding debts, sell, and convey the property, real and personal, and divide the moneys and other property among the stockholders, after paying its debts.

Sec. 42. TRUSTEES UNDER DISSOLUTION; POWERS AND LIABILITIES:—The persons consti-

tuted trustees as aforesaid shall have authority to sue for and recover the aforesaid debts and property, by the name of the trustees of such corporation, describing it by its corporate name, and shall be sueable by the same name for the debts owing by such corporation at the time of its dissolution, and shall be jointly and severally responsible for such debts, to the amounts of the moneys and property of such corporation which shall come into their hands or possession.”

Appellant disputes the contention that the corporation whose charter is forfeited under the Franchise Tax Law of the state of Delaware comes within the provisions of the sections of the general corporation laws of the state of Delaware concerning the status of such corporations after “dissolution” as therein defined. Section 40 of said Delaware laws, above quoted, limits the provisions thereof to corporations which “expire by their own limitation or are otherwise *dissolved*.” The present case certainly is not one where a corporation has expired by its own limitation. The word “dissolved” as used in said last-mentioned section refers to a voluntary dissolution such as is provided for in particular by the provisions of section 39 of said corporation laws (637-639, inc.), and does not refer to a corporation which is involuntarily dissolved by the forfeiture of its charter. The exercising or attempting to exercise any powers under a charter of any corporation whose charter has been forfeited under the Franchise Tax Law is expressly

declared to be a misdemeanor by section 77 (644) of said Franchise Tax Laws of Delaware.

But, if we are in error as to the non-applicability of the statutes of Delaware relating to the dissolution of corporations, to a corporation whose charter has been forfeited as in the present case, yet an application of these general laws relating to the dissolution of corporations and the powers of the officers and directors on such dissolution does not affect the principle for which we are now contending, namely, that no sufficient authority was shown for the execution of Complainant's Exhibit 8, upon which his entire right to prosecute this action was based.

In and by the provisions of sections 41 and 42 of said General Corporation Laws before quoted, it is provided, in general, that upon dissolution "*the directors or the governing body*, by whatever name it may be known, shall be trustees thereof." Pursuant to this express provision of the statutes of the state of Delaware, the directors of the corporation, upon the termination of its existence, became trustees for the same, and as such necessarily had less right to dispose of any property of the corporation, unless all the trustees "as the governing body," agreed thereto. These trustees must and could only legally act as a board or governing body, and not as individuals.

In addition thereto, it appears from the testimony of complainant himself that this document was executed by the president and secretary of the Pacific Crude Oil Company, by way of adjustment of com-

plainant's claims against said corporation for services rendered. The complainant testified that he had no agreement with the corporation in regard to his compensation (90), and he contends that there was a difference of opinion as to the value of his services between himself and said corporation. It seems manifest that, under such circumstances, individual officers of the corporation could not, without a proper resolution of the board of directors or governing body, compromise said claim and dispose of the right of redemption of the Pacific Crude Oil Company, if any it had, to the said property. The Pacific Crude Oil Company had invested a large amount of money in the acquisition of said property, and the purpose and effect of said document was a relinquishment of the investment heretofore made by such corporation and its stockholders.

POINT 7.

The Court Had No Jurisdiction Because of the Lack of Diversity of Citizenship Between the Parties.

Based upon answer, paragraph I (56), and Assignments of Error 63-65, inclusive (532).

The complaint, in paragraph first thereof (5) alleges that jurisdiction arises and is given to the Court "by reason of the diversity of the citizenship of the parties hereto. Complainant is now and always has been a citizen of the state of New York." This is

followed by allegations to the effect that the Pacific Crude Oil Company, plaintiff's assignor, is a Delaware corporation, and that the two defendants are citizens and residents of the state of California. It will be noted that the bill of complaint does not specifically allege that complainant is a citizen of the United States, nor does it at all allege of what state he is a resident. Paragraph I of the answer denies, for lack of knowledge or information or belief, the allegation in said bill that complainant is or was at the time of the commencement of the action, or at any other time, a citizen of the state of New York.

It will be noted that both the interlocutory and the final decree are entirely silent on the question of the citizenship of complainant. The court made no finding or decree on this issue.

There is nothing better settled than that where the jurisdiction of the District Court is dependent upon diversity of citizenship, it must affirmatively appear of record that the Court determined and found that there in fact was a diversity of citizenship.

In *Roberts v. Lewis*, 144 U. S. 653, 656, 36 L. E. 579, 582, this rule is stated in the following language:

“Whenever the jurisdiction of the Circuit Court of the United States depends upon the citizenship of the parties, it has been held from the beginning that the requisite citizenship should be alleged by the plaintiff and must appear of record; and that when it does not so appear this court, on writ of error, must reverse the judgment, for want of

jurisdiction in the Circuit Court. *Brown v. Keene*, 33 U. S. 8 Pet. 112 (8:885); *Continental Ins. Co. v. Rhoads*, 119 U. S. 237 (30:380)."

(A) Burden of proof was on complainant

In the case at bar, the denial of the allegation contained in the complaint as to the diversity of citizenship upon want of information and belief, put the question of the jurisdiction of the court in issue. It was, therefore, incumbent upon the complainant to prove his allegation of the complaint in reference to the said complainant being a citizen of the state of New York.

In *Hanchett v. Blair*, 100 Fed. 817, wherein a suit in equity was brought for a foreclosure of mortgage, the Circuit Court of Appeals of this Circuit passed upon this precise question. In that case, *which was a suit in equity*, the defendant, as here, in his answer alleged that he had no knowledge, information or belief sufficient to enable him to answer the allegation as to diversity of citizenship, and upon that ground defendant denied said allegation. The court said, at page 820:

"The only effect of such a denial is to compel the complainant to make prof upon that point. In *Dutilh v. Coursault*, 5 Cranch. C. C. 349, Fed. Cas. 4206, it was held that the answer of a defendant in chancery, who has no personal knowledge of the fact he states, and whose conscience cannot be affected thereby, is not evidence in the case, although responsive to the allegations of the bill.

The only effect of such an answer is to present an issue, and put the plaintiff to the proof of his allegations.”

There is no evidence in this case establishing the claim of complainant that he was in fact a citizen of New York at the time of the commencement of this action. The evidence, if any, in regard to complainant's residence during the period of time between 1914 and 1919 tends to show that complainant, during the greater part of said time, resided in the state of California. It is evident from complainant's own testimony that even an inference therefrom could not be drawn that complainant was not a citizen of the state of California or that he was a citizen of New York or any other state. As heretofore stated, no direct evidence was offered either by complainant or defendants on this question of citizenship. Indeed, there is no evidence in the entire record on the question as to the *citizenship* of complainant in any state. The only evidence bearing in any manner, directly or indirectly, upon this question of citizenship was that of plaintiff with relation to his place of *residence* for the five years preceding the bringing of this action. That evidence is as follows: In his answer to interrogatory No. 13 (46) he states: “I was the attorney at law in California for the company.” In his testimony (86) he states that in February, 1914, he was coming to California, particularly Los Angeles. He further testified (90) that he was retained generally to come to California and take charge of any interests

which the Pacific Crude Oil Company might be interested in in this state, and that he purchased the property in question and represented the company "and tried to work out their affairs *here* for five years." He further testified (96) that his instructions received in February, 1914, from the company were that he was retained as attorney to make this purchase and they gave him general instructions to buy the property and take care of it; and further (99) that he came to California in February, 1914, and then went East "to New York, Philadelphia, the mountains of Virginia, Atlantic City and numerous places;" and (99-100) that he returned to California in May or June, 1915, and remained here until January, 1918. He testifies (123) that on January 21, 1918, he received a memorandum which was left for him at the Angelus Hotel in Los Angeles, "where I received all my mail and telegrams." It further appears (587) from a letter written by complainant on March 30, 1918, that he was on that date a resident of Los Angeles, California. In that letter (588) he refers to his "home" as the place where he was living in Los Angeles, and distinguishes it from the place where his mail should be addressed, to-wit, the Angelus Hotel. The meaning of the word "home," as used in such letter, is explained by the testimony of Cochran (117) in which he states that he was living in Los Angeles at that time "on Hobart street, I think, not at the Angelus Hotel." He further states (117) that he was not East at all during 1918. From a letter written by complainant April 19, 1918

(589), it appears that he was still a resident of Los Angeles on the last-mentioned date; and from a subsequent letter, dated June 6, 1918 (592) it appears that he was still residing in the city of Los Angeles. Indeed, by a series of correspondence between complainant and the attorneys representing the sheriff in the mandate proceedings in the Superior Court of Ventura county, it appears that he was living in the state of California at least up to and including August 9, 1918 (587 to 598, inc.).

We submit that the only inference that can be drawn from this testimony is that the residence and domicile of this complainant at the time of the commencement of this action was in the state of California, and, there being no evidence that he was a citizen of the state of New York, it must be assumed that he was a citizen of the state of California.

POINT 8.

The Complainant or His Assignor, Having for a Period of Sixteen Months After the Expiration of the Period of Redemption Taken No Steps to Redeem, is Precluded from Maintaining This Action by Reason of Laches.

Raised by answer, paragraph XXVI (erroneously "XVI") (74); interlocutory decree, paragraph twelfth (378); and Assignments of Error 21 and 22 (520).

Section 702 of the Code of Civil Procedure of the state of California provides that the judgment debtor

or redemptioner may redeem the property from the purchaser within twelve months after the sale, and section 707 of the said code fixes the period of time within which the purchaser is to present his verified statement of account in case of demand for the same on the part of the judgment debtor or redemptioner. The period of time specified by said statute of California is one month from and after such demand; and the above-cited section 707 further prescribes that if such purchaser "fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction to compel an accounting * * *" In accordance with these statutory provisions the time for redemption or for bringing an action to enforce the right of redemption is at the most fixed for one year and one month. The code does not specify the particular time within which an action for accounting is to be brought upon refusal of the purchaser to give such account, but according to the general principle of construction of statutes, it must be conceded that the statute provides that such action should be brought within a reasonable time, having in view the condition of the purchasers' estate which remains unsettled until the expiration of the statutory time to redeem. In this case, as discussed *supra*, a paper purporting to be a demand for an account was presented to appellant March 1, 1918, two days before the expiration of the statutory time. This complainant, who made said demand, was notified in writing as early as January 29, 1918, over one month

prior to said demand, by the attorney for appellant (see Plaintiff's Exhibit 13, Tr. p. 581), that appellant required evidence of the legal authority of the party seeking to redeem. Complainant was further notified by this writing that when said evidence was furnished he would be given the requisite statement as to rents and profits. No such authority was ever furnished, but a demand, signed by the complainant in three different capacities, to-wit, individually, as trustee for the Pacific Crude Oil Company, and as attorney for said company, was on March 1st delivered to appellant.

In *Lynch v. Burt*, 132 Fed. 417, the redemptioner paid into the court the full amount apparently necessary to the redemption, on the last day of the statutory period prescribed for redemption, and secured at the same time a restraining order restraining the purchaser from applying to the sheriff for a deed. The Circuit Court of Appeals for the 8th Circuit holding that the deposit of money as made was not sufficient to satisfy the requirements of the statute in reference to redemption, and that the same was manifestly made for the purpose of extending the statutory period of time, said, at pages 429-30:

“In the absence of statutory provision therefor, there is no right of redemption from execution sales, and it logically follows that the extent or the measure of the right is found in the statutory terms prescribing the time and method

of its exercise and designating the persons who may exercise it. * * *

“In denying a claim to redeem after the expiration of the prescribed time, where the debtor was prevented from redeeming during that time by an unavoidable and distressing illness which incapacitated him from considering or attending to business affairs, Mr. Justice Campbell said, in *Cameron v. Adams*, 31 Mich. 426: ‘Courts of equity have large powers for relief against the consequences of inevitable accident in private dealings, and may doubtless control their own process and decrees to that end, but we think there is no such power to relieve against statutory forfeitures. Where a valid legislative act has determined the conditions on which rights shall vest or be forfeited and there has been no fraud in conducting the legal measures no court can interpose objections or qualifications in violation of the statute. The parties have a right to stand upon the terms of the law. This principle has not been open to controversy and is familiar and elementary.’

“These cases but state the general rule, which rests upon the want of power in courts of equity to enlarge or extend a right which they were powerless to create, their duty to yield obedience to the direct expression of the legislative will, and the manifest justice in requiring a debtor who, as a matter of grace, is granted the statutory period within which to save his land, to exercise the right within the time and in the manner prescribed. Time is of the essence of the conditions upon which the right is granted.

“While substantially acceding to the statement of the general rule just made counsel urged that a redemption was effected by the payment of the requisite amount into the court below under the circumstances heretofore recited, and also that this case comes within the general authority of courts of equity to relieve against fraud. We have no doubt that a statutory right of redemption may be enforced through a bill in equity *seasonably* brought in instances where the exercise of the right in conformity with the statutory requirements is wrongfully denied, obstructed, or prevented, or where, before the right can be properly exercised, it is necessary to determine by judicial proceedings in whom the right rests, from whom the redemption must be made, or the amount requisite to effect it; but a careful consideration of the facts of the present case demonstrates that it is not one for equitable intervention.” (The *italics* ours.)

As heretofore stated, complainant had over one month's notice of the fact that he would be required to show the authority to redeem. He had plenty of opportunity to satisfy this requirement, even, if necessary, going to the state of Delaware and procuring a proper evidence thereof from the judgment debtor. He made no such effort. The evidence shows that nothing whatever was done either by complainant or the judgment debtor, other than the preparation and service of said alleged demand, for the purpose of protecting or enforcing the right of redemption, until July 2, 1919, when this suit was commenced, thus al-

lowing to lapse a period of over fifteen months after the statutory period of redemption had expired, or in other words, a period of three months in excess of the statutory period itself. During this period both complainant and the judgment debtor allowed this appellant to continue the operations on the property; to construct new and useful improvements, and make needed repairs thereon; and had personal knowledge of the pendency and prosecution of the proceedings in the Superior Court of Ventura county, which resulted in the issuance of a writ of mandate against the sheriff compelling the issuance and delivery of his deed to appellant as the purchaser at the execution sale. As heretofore stated, the record is entirely silent as to any objections being made by complainant or by the judgment debtor against appellant's possession or occupation of the property. No attempt was made by complainant or the judgment debtor to intervene in said mandate proceedings; indeed, it appears directly from the complainant's letters written to the attorneys for the sheriff in said proceeding that complainant *intentionally* refrained from appearing, either in his own person or as trustee, or as attorney for the judgment debtor, in this mandate proceeding. In and by his letter of date March 30, 1918 (587) he states positively: "I certainly will not appear at its hearing," which refers to the hearing of said mandate proceeding set for the following Monday, April 1st. It appears from paragraph eighteenth of the complaint (18, 19), which is admitted by the answer, that the par-

ticular mandate proceeding in which the peremptory writ ordering the issuance of the deed was made and entered was commenced July 23, 1918, and that the judgment therein was not rendered or entered until August 29, 1918. It will thus be seen that the excuse given by complainant in his letter, Defendant's Exhibit A (582, at 586), that he did not feel justified in appearing in court on the motion in the original mandamus proceeding "because such motion might appear to give jurisdiction which at this moment I cannot do" was no excuse for his failure to appear at some time prior to August 29, 1918, some three months thereafter. There is nothing presented to the court showing or tending to show that complainant did not sleep on his rights, if any he has in the premises. Much less were the acts and conduct of the complainant, as evidenced by his letters, of such a nature as could appeal to the equity of the Court. The complainant seeks in this action a relief which can only be granted in extreme cases of fraud or in which the complainant himself has with due diligence prosecuted his claim. It will not do to say that plaintiff was sufficiently diligent and did all the law required of him under these circumstances by appearing in court at Ventura as *amicus curiae* on the hearing of the first mandate proceeding (testimony of Cochran, Tr. 117, 118). It is true that neither complainant nor the judgment debtor were parties of record to that proceeding, but the judgment debtor was the *real party in interest*, and the party most vitally concerned with

the issues then pending before the Superior Court. Why did not complainant or the judgment debtor intervene or seek to intervene in that proceeding; why did they not intervene or seek to intervene or become a party to the second proceeding in mandate? If either complainant or the judgment debtor had any reasonable grounds for not appearing in either of said proceedings in the said court, why, then, did they wait until July 2, 1919, before bringing any action in any court? It will not do to say that complainant was ignorant of what proceedings were required in order to entitle him or the judgment debtor to be heard in said proceeding. Ignorance of the law is no man's excuse, and, besides, plaintiff was an attorney at law, representing the judgment debtor as such in the state of California, having been retained for that specific purpose. It is to be presumed that plaintiff, as such attorney, knew the necessary procedure of the state of California in the premises. This conduct, under the circumstances, certainly amounted to laches.

In *Penn Mutual Life Ins. Co. v. Austin*, 168 U. S. 685, at 696, 42 L. Ed 626, at 630, the Supreme Court, quoting with approval from the previous decision of *Speidel v. Henrici*, 120 U. S. 377-387, 30 L. Ed. 3018, 3019, said:

“‘Independently of any statute of limitations, courts of equity uniformly decline to assist a person who has slept upon his rights and shows no excuse for his laches in asserting them. ‘A court of equity,’ said Lord Camden, ‘has always refused its aid to stale demands where the party slept

upon his rights and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence; where these are wanting, the court is passive, and does nothing. Laches and neglect are allways discountenanced; and therefore, from the beginning of this jurisdiction, there was always a limitation to suits in this court.’”

POINT 9.

The Interlocutory Decree Rendered Herein in Its Terms Is Inconsistent With the Master’s Report, as Well as With the Final Decree Confirming the Same. The Latter Confers Upon the Pacific Crude Oil Company, and the Complainant as Its Assignee, the Right to Redeem, While the Interlocutory Decree Specifically Declares That the Pacific Crude Oil Company Has Not and Never Had Any Right, Title or Interest in Said Property. If This Be True, It Never Possessed the Right to Redeem, and Therefore Could Assign No Such Right.

Based upon interlocutory decree, paragraph sixth (374); paragraph fifth (374); final decree, paragraph first (498-9); assignments of error 8, 9, 10 (516-517).

We insist and maintain that our position taken in points 1 and 2, *supra*, of this brief, namely, that at the time of the levy and sale under the execution the Pacific Crude Oil Company was the owner of the

complete equitable title or the equivalent to an entire beneficial ownership of the property, is correct, and that this appellant, as a purchaser at said sale, acquired such title and ownership, and that Cochran, as the resulting trustee, held merely the naked legal title, with no beneficial interest in the property. If, however, we are wrong in this contention, and the court below was correct in its holding in the interlocutory decree (374) that the said judgment debtor “neither had nor possessed any estate or any interest in the said real property,” but had and possessed only the right to enforce the trust as against the trustee, then we say that the final decree herein cannot stand. The complainant, as assignee of the Pacific Crude Oil Company, by the alleged assignment could acquire no greater rights than possessed by the assignor. The vital thing sought by this action is the redemption of the property. The effect of the redemption by the judgment debtor is that “he is restored to his estate.” (Code of Civil Procedure, Sec. 703.) If such debtor never had any estate in the property, how is it possible for him to be restored thereto? The master, in and by his report, holds that this appellant, as the purchaser, must account for the rents and profits to the judgment debtor or his assignee of the right of redemption, notwithstanding his report is based on the interlocutory decree, which finds that such judgment debtor never had any interest in the property. The final decree, confirming the report of the master, grants the relief prayed herein, holding “that the right

of redemption exists in favor of the complainant." The final decree, therefore, is wholly inconsistent with the essential holding embodied in the interlocutory decree, and either one or the other must necessarily be erroneous.

POINT 10.

The Intervention of William H. Cochran as Trustee Was Improperly Allowed and This Allowance Was Ineffectual for Any Purpose:

A—The Intervention Came Too Late.

B—No Sufficient Opportunity Given Appellant to Answer Complaint and Intervention.

C—If Any Issues Raised Thereby Appellant Entitled to Trial by Jury Thereon.

D—In Any Event the Intervenor Had No Interest in the Subject Matter of This Action.

Based upon petition to intervene (473), order granting leave to interven (494), objections of defendant to petition to intervene (487), exceptions of defendants to intervention and final decree, (see stipulation, paragraph fourth (652-653); and final decree (498); assignments of error, 60 and 61 (531).

The petition for leave to intervene was filed by William H. Cochran as trustee on the 17th day of November, 1920 (487), nearly seven months after the rendition of the interlocutory decree herein and after the cause was set down for settlement of the report

of the special master and the final decree. The intervention, therefore, came too late.

Section 387 of the Code of Civil Procedure of the State of California reads in part:

“At any time before trial, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. * * *

In *Hibernian Savings & Loan Society v. Churchill*, 128 Cal. 633, 636, the Supreme Court of California construing said section of the Code of Civil Procedure held that in view of the express language of said statute to the effect that an intervention can take place only “before the trial,” no intervention is permissible after trial or entry of default. The court said there:

“It is the general rule that an intervention will not be allowed when it would retard the principal suit, or require a re-opening of the case for further evidence, or delay the trial of the action, or change the position of the original parties. (*Van Gorden v. Ormsby*, 55 Iowa, 664; *Boyd v. Heine*, 41 La. Ann. 393; *Ragland v. Wisrock*, 61 Tex. 391; *Cahn v. Ford*, 42 La. Ann. 965; *Mayer v. Stahr*, 35 La. Ann. 57.) In order to prevent the intrusion of strangers after the issues between the original parties have been determined, our code expressly provides that an intervention must be ‘before the trial.’”

In *Seligman v. City of Santa Rosa*, 81 Fed. 524, 525, the Circuit Court ~~of Appeals for this Circuit~~ ap-

plied the above quoted section of the California Code of Civil Procedure to a case wherein the trial had terminated at the time the application for intervention was filed. This court holding that said application came too late used the following language:

“The motion to intervene was opposed by the complainants upon the grounds: First, because the motion came too late. Section 387 of the Code of Civil Procedure of this state provides that: ‘Any person may before the trial intervene in an action or proceeding, who has an interest in the matter in litigation, in the success in either of the parties, or an interest against both.’ It was contended, on behalf of the complainants in this case, that when this motion was made to intervene the trial had not only commenced, but it had ended by the submission of the case on bill and answer. There was nothing left for the parties to do in presenting the controversy to the court for its determination, and it only remained for the court to enter its judgment. I think this is the correct view to be taken of this motion. It came too late to be entertained as presenting any issue for the judgment of the court. Any other practice would lead to confusion or uncertainty.”

In the case at bar the order granting leave to intervene was made on the 30th day of November, 1920 (494), and the final decree was rendered on the following day, to-wit, the first day of December, 1920 (507). No issue presented by the intervention was heard or tried by the court and the effect of the order granting William H. Cochran as trustee the right to

intervene merely was to continue the rendition of the final decree for the following day. Simultaneously the court made an order requiring appellant to answer the petition of intervention within one day, to-wit, not later than 10:00 o'clock A. M. of the first day of December, 1920 (497). The petition for intervention contained thirteen paragraphs and traversed a number of essential matters requiring a detailed answer on the part of appellant and, we respectfully submit, it was an abuse of discretion to allow appellant only one day within which to answer the verbose and lengthy petition of the intervenor.

So, too, the petition of intervention is based upon an alleged trespass of appellant and consequently constitutes in its nature an action at law. Appellant in its objections to the petition for leave to intervene expressly demanded a trial by jury of the issues at law raised by said petition. Paragraph four of said objections reads:

“These defendants, and especially defendant Big Sespe Oil Company, possesses and claims the right to contest and defend against the claims of said petitioner in said proposed intervention, and especially the right to contest and defend against any claim of said petitioner for a money judgment for damages or otherwise, and to have the issues raised by such claim and defense submitted to and passed upon by a jury under the Constitution of the United States, and insists upon and does not waive such right.” (488)

While this suit was one in equity appellant was entitled to a trial by jury of the legal issues presented by the petition for intervention.

In *Rouse v. Hornsby*, 67 Fed. 219, 220, which was also a case in equity, the petition for intervention presented a cause of action at law, and the Circuit Court for the Eighth Circuit held that in such instance it should be treated as an action at law and is properly tried by jury. It is said there:

“While the intervening petition was filed in a chancery suit, it had no relation to any equitable issue in that case, and presented only a cause of action at law, which the Court very properly impaneled a jury to try. For all practical purposes, it was an action at law against the receivers, and the Circuit Court did right in treating it as such.”

Moreover, the intervenor William H. Cochran as trustee had no beneficial interest in the subject matter of this suit, as it is specifically pointed out in Point 1 of this brief, and possessed only the naked legal title holding the same for the Pacific Crude Oil Company which paid the consideration for the property in question. The reason for and object of said intervention was expressed in the petition for intervention as follows:

“* * * this Honorable Court is reconsidering the advisability of making any final disposition of these surplus profits, without first hearing the aforesaid trustee, your petitioner relative thereto.
* * *” (481)

In other words the purpose of the intervention was to determine the disposition of the alleged surplus profits. And yet the petitioner in the same petition for leave to intervene expressly concedes that he has no interest in the profits accounted for. It is alleged in paragraph twelfth of said petition that “your petitioner thus admits and concedes that, ‘as trustee,’ he has no interest in, nor ownership of the profits which have been accounted for in this suit, by the defendant, Big Sespe Oil Company.” (485) Hence, the intervenor under no circumstances had any interest in the subject matter of this suit and it was error to permit William H. Cochran as trustee to intervene herein.

POINT 11.

The Court Erred in Restraining Appellant From Claiming Any Right or Interest in Certain Personal Property Belonging to Appellant and From Removing Said Personal Property From the Real Property Involved in This Action.

Based upon final decree, paragraphs seventh (501) and eighth (502); and assignments of error (55 to 58 inc.) (529, 530).

The lower court, in and by its final decree (paragraphs seventh and eighth) (501, 502), perpetually enjoined appellant from asserting any claim of right whatsoever to the personal property, machinery and equipment situated in or upon the real property in-

volved in the action. This portion of the decree has nothing in the record to support it. The pleadings make no mention of personal property. The ownership of the personal property was not, nor was the right to the possession thereof, an issue in the case. This portion of the decree was therefore erroneous.

There was evidence before the special master showing that considerable personal property was purchased for use on this property by this appellant during its occupation thereof and that this personal property still remained loose and detached on the real property at the time of the master's report. For instance, the master (445) expressly finds that appellant in 1919, at a cost of some \$75, placed a gauging tank on the property. Appellant was denied a credit for this amount and by the final decree it is enjoined from asserting any claim of ownership thereto. In this connection, it seems appropriate to again remind the court that complainant never had nor possessed any ownership of or right to the possession of any personal property in connection with the said real property. The sole source of any claim to right of ownership or possession in or to any property is said alleged assignment from the judgment debtor (Complainant's Exhibit 8) (569), which, as hereinbefore shown, does not even purport to assign to complainant anything more than the naked right to redeem the real property.

POINT 12.

The Court Erred in That Portion of the Final Decree Ordering Appellant to Deposit in Court the Sum \$3,843.84, Together With Interest Thereon, as the Alleged Surplus of Profits Over Amount Required to Redeem. Upon a Proper Accounting There Was No Surplus and There Was No Party Before the Court Who Was Entitled to Any Surplus.

Based upon exceptions to master's report, paragraphs First (463), Fourth to Twelfth inc. (464 to 467 inc.), Fourteenth to Sixteenth inc. (468), Eighteenth (469); order of court approving master's report and denying exceptions (360-361); the final decree and especially paragraphs First to Sixth inc. (498 to 501 inc.); assignments of error, 32 (523) to 38 (524) inc., 41 to 43 inc. (525), 45 (526), 46 (526), 47 (526), 49 and 50 (527), and 53 (528).

We have already, *supra*, under Point 2, discussed to some extent the errors of the master and the court with reference to the allowance and disallowance of interest on the accounting. The master followed the holding of the District Court, in its interlocutory decree (paragraph sixth) (374) (paragraph eighth) (375), to the effect that the Pacific Crude Oil Company had no right, title or interest in or to the property involved in this suit, and that therefore appellant as the purchaser of said interest of the said Pacific

Crude Oil Company acquired no interest in the same or the rents and profits therefrom, and that appellant was a mere trespasser. Basing his report upon this premise, the master concluded that appellant is to account for any and all moneys received by him during the period of redemption, and up to the time of the final decree, and that, on the other hand, no deductions except the sum of \$746.31, paid by appellant for state and county taxes, should be allowed to appellant. Striking the balance of account upon this erroneous, we respectfully submit, basis, the master found that there was a surplus of moneys received by appellant over the deductions allowed in the sum, as finally adjudged in the decree, of \$3,843.84, with interest, making a total of \$3,980.12 (501). It must be borne in mind that the regularity of the proceedings wherein appellant obtained its judgment against the Pacific Crude Oil Company is not questioned, and that the judgment debtor and the complainant, as its assignee of the right of redemption, by attempting to demand an account for the purpose of redemption, and by bringing this suit, concede that the judgment and sale were had and obtained in due course of legal proceedings. Nevertheless, the report and the final decree confirming the same are founded upon the holding and assumption that the judgment creditor receiving the rents and profits from the property purchased by it at execution sale was guilty of a tort and in the eyes of the law was nothing more and nothing less than a trespasser. For the sake of illustration, we might

refer to the position taken by the master, which position is confirmed by the final decree of the court, in reference to the moneys received by the purchaser from the rents and profits of the property. The master (453, 454) in his report charges the purchaser with interest on all proceeds from the sale of oil from the time of their respective payments up to and including the day of the entry of the final decree. In the summary statement of the master (453) the master says:

“Defendant should be charged with the various amounts of money collected and received by it, from the sale of the crude petroleum which it has extracted and sold from the real property involved in this suit; such amounts being as hereinbefore found and stated. And such charges should be respectively made as and of the days of the dates when such moneys were respectively collected and received by defendant, as also hereinbefore found and stated.

“Defendant should also be charged with interest at the rate of seven per cent per annum on these proceeds from the sale of oil, from the time of their several respective payments, up to and including the day of the entry of the final decree herein.”

Section 702 of the Code of Civil Procedure expressly provides that in order to redeem the judgment debtor or redemptioner must pay the purchaser “the amount of his purchase, with one per cent per month *thereon* in addition, *up to the time of redemption.*” The master not only disregarded this statutory pro-

vision in not allowing the purchaser one per cent per month on the amount of the purchase price and allowing interest only on the balance that may be found due under the accounting, but *in addition thereto charges the purchaser with interest on all moneys received by him from the time the same were received as rents or profits from the property up to the time of the entry of the final decree.*

Hereinbefore, under Point 2, we have discussed the matter of the appellant's being denied all credits for expenditures except only state and county taxes. We will not impose upon the time of the Court by a detailed reference to the individual items and the testimony concerning them. But for the purpose of illustrating the point under consideration, and in particular to show the manifest error in that portion of the decree compelling appellant to pay into the court the alleged surplus of \$3,843.84 with interest, we desire to call the Court's attention to one particular phase of said master's report as confirmed by the Court. Under the heading "Operation of the Realty" (429) the master found that there were certain "payments proven to have been made by defendant in the pumping of the wells on this property, and in marketing the oil extracted and produced therefrom" (437). These payments amounted to \$4,422.49, and the master found that they were proper, necessary and reasonable expenses in the premises, and that appellant would have been entitled to credit for these expenses save and except for the sole reason that it was a trespasser,

on which ground alone these credits were denied appellant. Had this one item alone, to say nothing of many others, been allowed as a credit to this appellant, it is impossible to say what precise effect this would have had upon the final result of the accounting, but one thing is absolutely certain, that if said item had been allowed, there would have been no surplus whatever and therefore no judgment against this defendant for \$3,843.84 with interest.

A reference to one other item will be sufficient for the present discussion. The master's report (422), based upon the testimony, finds that on October 4th, 1917, within one year after the sale, a fire swept over the property, totally destroying the derricks, rigs and certain of the equipment of wells Nos. 3 and 4, and also seriously damaging other property. He further finds (422) that defendant, prior to January 7th, 1918, had erected new derricks in the place of those destroyed and had repaired or replaced the pumping equipment. The master's report (439, 440) shows that the defendant incurred expenses for labor, materials and equipment in repairing this destruction and in restoring said wells so that they might produce oil, to the amount of \$1,278.39. Pumping was thereafter continued from these wells, and the entire proceeds received from the operation of said property thereafter, and for which this appellant is compelled to account, came from the operation of these two wells as repaired and restored, yet, strange to say, both the master and the Court deny appellant any credit what-

ever for these expenses, the master stating (440) that these expenses incurred were not “in any legal sense ‘necessary’ repairs on this property”; but, on the contrary, were improvements voluntarily and unnecessarily made.

We have therefore shown under this Point 12 that, independent of the errors in the computation of interest, the result of which cannot be precisely ascertained from the report and the final decree, appellant was at least entitled to two credits, one for \$4,422.49, the other for \$1,278.39, making a total of \$5,700.88, for which it was given no credit whatever, but on the contrary was ordered to pay into court an alleged surplus of \$3,843.84. It goes without saying that various other items of the account could be enumerated showing that the master erred in disallowing credits for expenditures necessarily incurred in the operation of the wells, but in view of the fact that we do not desire to burden this court with an unnecessary discussion of separate items of the account, we deem it improper at this time to go into greater length into the analysis of the master’s report. This is a proper subject for a new accounting.

But, independent of the question of any errors in the master’s report, we submit that that portion of the decree ordering appellant to pay into court this alleged surplus was entirely erroneous because and for the reason that there was no party to this action who, under any circumstances, had the right to recover any surplus from this appellant. We have already, at the close of the discussion under Point 10, *supra*, page

104, shown to the court that William H. Cochran, as trustee, not only had no right to claim any surplus, but expressly disclaimed any such right. The Pacific Crude Oil Company is not a party to the action and the alleged assignment from said company to complainant, as we have heretofore shown, does not assign, nor does it purport to assign anything but the naked right to redeem.

Conclusion.

In conclusion, it must be manifest from the foregoing argument that the complainant in this action has utterly failed to make out a case or even to show ground for relief in equity. The complainant had no beneficial interest in the property at the time the same was purchased from the appellant. The initial purchase payment was made by the Pacific Crude Oil Company and conveyance was made in the name of complainant, who thereby became the trustee of a resulting trust. This suit is brought by him upon an alleged assignment for which admittedly he paid no consideration other than services claimed to have been rendered to the Pacific Crude Oil Company. This assignment was made to and accepted by complainant some fifteen months after the right of redemption had expired and after this appellant had, to the knowledge and with the acquiescence of complainant, operated this property for a period of over two years, during all of which time it had been continuously under great expense in the operation of said property and in the

construction of improvements and repairs thereon to the knowledge and without any objection from this complainant. The assignment was also made after the Pacific Crude Oil Company had forfeited its charter and was, to all appearances, a defunct corporation.

On the other hand, it is not disputed in the case that the judgment of appellant against the Pacific Crude Oil Company was duly made and rendered and that all subsequent proceedings in reference to the sale of the property were regular. The appellant, as the purchaser at the sheriff's sale, thereupon entered into possession of the property and continued in such possession without interruption, or any step on the part of the judgment debtor to redeem the same. Over one month prior to the expiration of the statutory period for redemption appellant, evidently becoming aware of the fact that the Pacific Crude Oil Company had forfeited its charter, informed William H. Cochran, who represented, or claimed to represent, the Pacific Crude Oil Company in California, that in order to redeem it would be necessary to furnish proof that the party desiring to redeem was entitled to do so, and further informed him that as soon as such proof was furnished appellant it would give a statement of the rents and profits. No such authority was furnished, and a demand for a verified statement of account was made two days prior to the expiration of the full statutory period for redemption. Thereafter, for the period of one year and three months, nothing was done by the judgment debtor or anyone else in its behalf by

way of taking steps to overcome the effect of the expiration of the time to redeem. The complainant had full knowledge of the fact that, several months after the expiration of the time for redemption, appellant instituted mandamus proceedings for the purpose of directing the sheriff to issue a deed to the purchaser. Complainant intentionally refrained, either individually or for the judgment debtor, from becoming a party to these proceedings, and also refrained from instituting any affirmative action to protect or enforce the right of redemption. And this, notwithstanding the fact (if the allegations of plaintiff's verified bill of complaint herein are true) that he was fully conversant with all of the phases of said mandamus proceedings and knew that they were initiated and prosecuted in fraud and for the express purpose of deceiving and defrauding the Superior Court of Ventura county into granting this appellant relief to which it was not entitled.

The affirmance of the decree in this cause will result in depriving this appellant of 245 acres of valuable oil-producing lands originally owned by it which was not paid for in full, and of requiring appellant to pay to the alleged assignee of the delinquent debtor the sum of approximately \$4,000.

We respectfully submit that under those circumstances, and for the reasons hereinbefore stated, this decree should be reversed.

DUDLEY W. ROBINSON,
A. I. McCORMICK,
Attorneys for Appellant.

APPENDIX.

Statutes Referred To.

Code of Civil Procedure.

Section 387.

Intervention, When It Takes Place, and How Made.

At any time before trial, any person, who has an interest in the matter in litigation, or in the success of either of the parties, or an interest against both, may intervene in the action or proceeding. An intervention takes place when a third person is permitted to become a party to an action or proceeding between other persons, either by joining the plaintiff in claiming what is sought by the complaint, or by uniting with the defendant in resisting the claims of the plaintiff, or by demanding anything adversely to both the plaintiff and the defendant, and is made by complaint, setting forth the grounds upon which the intervention rests, filed by leave of the court and served upon the parties to the action or proceeding who have not appeared, and upon the attorneys of the parties who have appeared, who may answer or demur to it within ten days from the service thereof, if served within the county wherein said action is pending, or within thirty days if served elsewhere. (Amendment approved 1907; Stats. 1907, p. 703.)

Section 700.

Sale of Real Property. What Purchaser Is Substituted to and Acquires. Upon a sale of real property, the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor thereto on the date of the levy of the execution thereon, where such judgment is not a lien upon such property; if the judgment is a lien upon the real property the purchaser is substituted to and acquires all the right, title, interest, and claim of the judgment debtor on or at any time after the day such judgment became a lien on such property; and in case property, real or personal, has been attached in the action, the purchaser is substituted to and acquires all the right, title, interest and claim of the judgment debtor on or at any time after the day the attachment was levied upon such property. (Amendment approved 1907; Stats. 1907, p. 684.)

Section 700a.

When Sales Are Absolute. What Certificate Must Show. Sales of personal property, and of real property, when the estate therein is less than a leasehold of two years' unexpired term, are absolute. In all other cases the property is subject to redemption, as provided in this chapter. The officer must give to the purchaser a certificate of sale, and file a duplicate thereof for record in the office of the county recorder of the county, which certificate must state the date of

the judgment under which the sale was made and the names of the parties thereto, and contain:

1. A particular description of the real property sold;
2. The price bid for each distinct lot or parcel;
3. The whole price paid;
4. If the property is subject to redemption, the certificate must so declare, and if the redemption can be effected only in a particular kind of money or currency, that fact must be stated.

Section 701.

Real Property so Sold, by Whom It May Be Redeemed. Property sold subject to redemption, as provided in the last section, or any part sold separately, may be redeemed in the manner hereinafter provided, by the following persons, or their successors in interest:

1. The judgment debtor, or his successor in interest, in the whole or any part of the property;
2. A creditor having a lien by judgment or mortgage on the property sold, or on some share or part thereof, subsequent to that on which the property was sold. The persons mentioned in the second subdivision of this section are in this chapter termed redemptioners.

Section 702.

When It May Be Redeemed, and Redemption-Money. The judgment debtor, or redemptioner, may redeem the property from the purchaser any time

within twelve months after the sale on paying the purchaser the amount of his purchase, with one per cent per month thereon in addition, up to the time of redemption, together with the amount of any assessment or taxes which the purchaser may have paid thereon after purchase, and interest on such amount. And if the purchaser be also a creditor, having a prior lien to that of the redemptioner, other than the judgment under which said purchase was made, the amount of such lien with interest. (Amendment approved 1897; Stats. 1897, p. 41.)

Section 703.

When Judgment Debtor or Another Redemptioner May Redeem. If property be so redeemed by a redemptioner, another redemptioner may, within sixty days after the last redemption, again redeem it from the last redemptioner on paying the sum paid on such last redemption, with two per cent thereon in addition, and the amount of any assessment or taxes which the last redemptioner may have paid thereon after the redemption by him, with interest on such amount, and, in addition, the amount of any liens held by said last redemptioner prior to his own, with interest; but the judgment under which the property was sold need not be so paid as a lien. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, on paying the sum paid on the last previous redemption, with two per cent thereon

in addition, and the amounts of any assessments or taxes which the last previous redemptioner paid after the redemption by him, with interest thereon, and the amount of any liens, other than the judgment under which the property was sold, held by the last redemptioner previous to his own, with interest. Written notice of redemption must be given to the sheriff and a duplicate filed with the recorder of the county, and if any taxes or assessments are paid by the redemptioner, or if he has or acquires any lien other than that upon which the redemption was made, notice thereof must in like manner be given to the sheriff and filed with the recorder; and if such notice be not filed, the property may be redeemed without paying such tax, assessment, or lien. If no redemption be made within twelve months after the sale, the purchaser, or his assignee, is entitled to a conveyance; or if so redeemed, whenever sixty days have elapsed, and no other redemption has been made, and notice thereof given, and the time for redemption has expired, the last redemptioner, or his assignee, is entitled to a sheriff's deed; but, in all cases, the judgment debtor shall have the entire period of twelve months from the date of the sale to redeem the property. If the judgment debtor redeem, he must make the same payments as are required to effect a redemption by a redemptioner. If the debtor redeem, the effect of the sale is terminated, and he is restored to his estate. Upon a redemption by the debtor, the person to whom the payment is made must execute and deliver to him a cer-

tificate of redemption, acknowledged or proved before an officer authorized to take acknowledgments of conveyances of real property. Such certificate must be filed and recorded in the office of the recorder of the county in which the property is situated, and the recorder must note the record thereof in the margin of the record of the certificate of sale. (Amendment approved 1897; Stats. 1897, p. 41.)

Section 704.

In Cases of Redemption, to Whom the Payments Are to Be Made. The payments mentioned in the last two sections may be made to the purchaser or redemptioner, or for him, to the officer who made the sale. When the judgment under which the sale has been made is payable in a specified kind of money or currency, payments must be made in the same kind of money or currency, and a tender of the money is equivalent to payment.

Section 705.

What a Redemptioner Must Do in Order to Redeem. A redemptioner must produce to the officer or person from whom he seeks to redeem and serve with his notice to the sheriff making the sale, or his successor in office:

1. A copy of the docket of the judgment under which he claims the right to redeem, certified by the clerk of the court, or of the county where the judgment is docketed; or, if he redeem upon a mortgage

or other lien, a note of the record thereof, certified by the recorder;

2. A copy of any assignment necessary to establish his claim, verified by the affidavit of himself, or of a subscribing witness thereto;

3. An affidavit by himself or his agent, showing the amount then actually due on the lien. (Amendment approved 1909; Stats. 1909, p. 967.)

Section 706.

Until the Expiration of Redemption-Time, Court May Restrain Waste on the Property. What Considered Waste. Until the expiration of the time allowed for redemption, the court may restrain the commission of waste on the property, by order granted with or without notice, on the application of the purchaser or the judgment creditor. But it is not waste for the person in possession of the property at the time of the sale, or entitled to possession afterwards, during the period allowed for redemption, to continue to use it in the same manner in which it was previously used; or to use in the ordinary course of husbandry; or to make the necessary repairs of buildings thereon; or to use wood or timber on the property therefor; or for the repair of fences; or for fuel in his family, while he occupies the property.

Section 707.

Rents and Profits. The purchaser from the time of the sale until a redemption, and a redemptioner, from the time of his redemption until another redemption,

is entitled to receive, from the tenant in possession, the rents of the property sold, or the value of the use and occupation thereof. But when any rents or profits have been received by the judgment creditor or purchaser, or his or their assigns, from the property thus sold preceding such redemption, the amounts of such rents and profits shall be a credit upon the redemption-money to be paid; and if the redemptioner or judgment debtor, before the expiration of the time allowed for such redemption, demands in writing of such purchaser or creditor, or his assigns, a written and verified statement of the amounts of such rents and profits thus received, the period for redemption is extended five days after such sworn statement is given by such purchaser or his assigns, to such redemptioner or debtor. If such purchaser or his assigns shall, for a period of one month from and after such demand, fail or refuse to give such statement, such redemptioner or debtor may bring an action in any court of competent jurisdiction, to compel an accounting and disclosure of such rents and profits, and until fifteen days from and after the final determination of such action, the right of redemption is extended to such redemptioner or debtor.

Section 1971.

Transfer of Real Property to Be in Writing. No estate or interest in real property, other than for leases for a term not exceeding one year, nor any trust or power over or concerning it, or in any manner relating thereto, can be created, granted, assigned, surrendered,

or declared, otherwise than by operation of law, or a conveyance or other instrument in writing, subscribed by the party creating, granting, assigning, surrendering, or declaring the same, or by his lawful agent thereunto authorized by writing.

Civil Code of California.

Section 847.

What Uses and Trusts May Exist. Uses and trusts in relation to real property are those only which are specified in this title.

Section 852.

Trust Must Be in Writing. No trust in relation to real property is valid unless created or declared:

1. By a written instrument, subscribed by the trustee, or by his agent thereto authorized by writing;
2. By the instrument under which the trustee claims the estate affected; or
3. By operation of law.

Section 853.

Transfer to One for Money Paid by Another. When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made. (Amendment approved 1874; Code Amds. 1873-74, p. 221.)

Section 857.

Purposes of Express Trusts. Express trusts may be created for any of the following purposes:

1. To sell and convey real property and to hold or reinvest or apply or dispose of the proceeds in accordance with the instrument creating the trust.
2. To mortgage or lease real property for the benefit of annuitants, or devisees or legatees, or other beneficiaries, or for the purpose of satisfying any charge thereon.
3. To receive the rents and profits of real property, and pay them to, or apply them to the use of any person, whether ascertained at the time of the creation of the trust or not, for himself or for his family during the life of such person, or for any shorter term, subject to the rules of title 2 of division 2 of part 1 of this code.
4. To receive the rents and profits of real property and to accumulate the same for the purposes and within the limits prescribed by the same title; or
5. To convey, partition, divide, distribute or allot real property in accordance with the instrument creating the trust, subject to the limitations of the same title.

Section 863.

Trustees of Express Trusts to Have Whole Estate. Except as hereinafter otherwise provided, every express trust in real property, valid as such in its crea-

tion, vests the whole estate in the trustees, subject only to the execution of the trust. The beneficiaries take no estate or interest in the property, but may enforce the performance of the trust.

Section 1624.

What Contracts Must Be Written. The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

Section 2230.

Certain Transactions Forbidden. Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows:

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and without the use of any influence on the part of the trustee, permits him to do so;
2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or
3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant

permission for themselves, and the proper court for the latter, in the manner above prescribed.

Section 2235.

Presumption Against Trustees. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

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EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog-eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.

